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STATE FALSE CLAIMS ACT REQUIREMENTS FOR INCREASED STATE SHARE OF RECOVERIES[87]

Sec. 1909. [42 U.S.C. 1396h] (a) In General.—Notwithstanding section 1905(b), if a State has in effect a law relating to false or fraudulent claims that meets the requirements of subsection (b), the Federal medical assistance percentage with respect to any amounts recovered under a State action brought under such law, shall be decreased by 10 percentage points.

(b) Requirements.—For purposes of subsection (a), the requirements of this subsection are that the Inspector General of the Department of Health and Human Services, in consultation with the Attorney General, determines that the State has in effect a law that meets the following requirements:

(1) The law establishes liability to the State for false or fraudulent claims described in section 3729 of title 31, United States Code, with respect to any expenditure described in section 1903(a).

(2) The law contains provisions that are at least as effective in rewarding and facilitating qui tam actions for false or fraudulent claims as those described in sections 3730 through 3732 of title 31, United States Code.

(3) The law contains a requirement for filing an action under seal for 60 days with review by the Attorney General.

(4) The law contains a civil penalty that is not less than the amount of the civil penalty authorized under section 3729 of title 31, United States Code.

(c) Deemed Compliance.—A State that, as of January 1, 2007, has a law in effect that meets the requirements of subsection (b) shall be deemed to be in compliance with such requirements for so long as the law continues to meet such requirements.

(d) No Preclusion of Broader Laws.—Nothing in this section shall be construed as prohibiting a State that has in effect a law that establishes liability to the State for false or fraudulent claims described in section 3729 of title 31, United States Code, with respect to programs in addition to the State program under this title, or with respect to expenditures in addition to expenditures described in section 1903(a), from being considered to be in compliance with the requirements of subsection (a) so long as the law meets such requirements.

[87] See Vol. II, 31 U.S.C. 3729 through 3732.

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

JUL 24 2008

Edmund G. Brown, Jr.
Attorney General
Office of Attorney General
State of California
1300 I Street, Suite 1740
Sacramento, California 95814

Dear Mr. Brown:

The Office of Inspector General (OIG) of the U.S. Department of Health and Human Services (HHS) has received your request to review the California False Claims Act, Cal. Gov't Code §§ 12650 through 12656, under the requirements of section 6031(b) of the Deficit Reduction Act (DRA). Section 6031 of the DRA provides a financial incentive for states to enact laws that establish liability to the state for individuals and entities that submit false or fraudulent claims to the state Medicaid program. For a state to qualify for this incentive, the state law must meet certain requirements enumerated under section 6031(b) of the DRA, as determined by the Inspector General of HHS in consultation with the Department of Justice (DOJ). Based on our review of the law and consultation with DOJ, we have determined that the California False Claims Act meets the requirements of section 6031(b) of the DRA.

Please note that a state that has a law in effect that OIG has determined meets the requirements of section 6031(b) of the DRA will be deemed in compliance with such requirements for so long as the law continues to meet such requirements. We would appreciate it if you would notify OIG of any amendment to the California False Claims Act within 30 days after such amendment.

If you have any questions regarding this review, please contact me, or your staff may contact Susan Elter Gillin at 202-205-9426 or susan.gillin@oig.hhs.gov or Katie Arnholt at (202) 205-3203 or katie.arnholt@oig.hhs.gov.

Sincerely,

Daniel R. Levinson

Daniel R. Levinson
Inspector General

cc: Aaron Blight, CMS

West's Annotated California Codes Currentness
Government Code (Refs & Annos)
Title 2. Government of the State of California
Division 3. Executive Department (Refs & Annos)
Part 2. Constitutional Officers (Refs & Annos)
Chapter 6. Attorney General (Refs & Annos)
Article 9. False Claims Actions (Refs & Annos)
§ 12650. Short title; definitions

(a) This article shall be known and may be cited as the False Claims Act.

(b) For purposes of this article:

(1) “Claim” means any request or demand, whether under a contract or otherwise, for money, property, or services, and whether or not the state or a political subdivision has title to the money, property, or services that meets either of the following conditions:

(A) Is presented to an officer, employee, or agent of the state or of a political subdivision.

(B) Is made to a contractor, grantee, or other recipient, if the money, property, or service is to be spent or used on a state or any political subdivision program or interest, and if the state or political subdivision meets either of the following conditions:

(i) Provides or has provided any portion of the money, property, or service requested or demanded.

(ii) Reimburses the contractor, grantee, or other recipient for any portion of the money, property, or service that is requested or demanded.

(2) “Claim” does not include requests or demands for money, property, or services that the state or a political subdivision has paid to an individual as compensation for employment with the state or political subdivision or as an income subsidy with no restrictions on that individual's use of the money, property, or services.

(3) “Knowing” and “knowingly” mean that a person, with respect to information, does any of the following:

(A) Has actual knowledge of the information.

(B) Acts in deliberate ignorance of the truth or falsity of the information.

(C) Acts in reckless disregard of the truth or falsity of the information.

Proof of specific intent to defraud is not required.

(4) “Material” means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money, property, or services.

(5) “Political subdivision” includes any city, city and county, county, tax or assessment district, or other legally authorized local governmental entity with jurisdictional boundaries.

(6) “Political subdivision funds” means funds that are the subject of a claim presented to an officer, employee, or agent of a political subdivision or where the political subdivision provides, has provided, or will reimburse any portion of the money, property, or service requested or demanded.

(7) “Prosecuting authority” refers to the county counsel, city attorney, or other local government official charged with investigating, filing, and conducting civil legal proceedings on behalf of, or in the name of, a particular political subdivision.

(8) “Person” includes any natural person, corporation, firm, association, organization, partnership, limited liability company, business, or trust.

(9) “State funds” mean funds that are the subject of a claim presented to an officer, employee, or agent of the state or where the state provides, has provided, or will reimburse any portion of the money, property, or service requested or demanded.

§ 12650.1. Rejected

§ 12651. Acts subjecting person to treble damages, costs and civil penalties; exceptions

(a) Any person who commits any of the following enumerated acts in this subdivision shall have violated this article and shall be liable to the state or to the political subdivision for three times the amount of damages that the state or political subdivision sustains because of the act of that person. A person who commits any of the following enumerated acts shall also be liable to the state or to the political subdivision for the costs of a civil action brought to recover any of those penalties or damages, and shall be liable to the state or political subdivision for a civil penalty of not less than five thousand dollars ($5,000) and not more than ten thousand dollars ($10,000) for each violation:

(1) Knowingly presents or causes to be presented a false or fraudulent claim for payment or approval.

(2) Knowingly makes, uses, or causes to be made or used a false record or statement material to a false or fraudulent claim.

(3) Conspires to commit a violation of this subdivision.

(4) Has possession, custody, or control of public property or money used or to be used by the state or by any political subdivision and knowingly delivers or causes to be delivered less than all of that property.

(5) Is authorized to make or deliver a document certifying receipt of property used or to be used by the state or by any political subdivision and knowingly makes or delivers a receipt that falsely represents the property used or to be used.

(6) Knowingly buys, or receives as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property.

(7) Knowingly makes, uses, or causes to be made or used a false record or statement material to an obligation to pay or transmit money or property to the state or to any political subdivision, or knowingly conceals or knowingly and improperly avoids, or decreases an obligation to pay or transmit money or property to the state or to any political subdivision.

(8) Is a beneficiary of an inadvertent submission of a false claim, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the state or the political subdivision within a reasonable time after discovery of the false claim.

(b) Notwithstanding subdivision (a), the court may assess not less than two times and not more than three times the amount of damages which the state or the political subdivision sustains because of the act of the person described in that subdivision, and no civil penalty, if the court finds all of the following:

(1) The person committing the violation furnished officials of the state or of the political subdivision responsible for investigating false claims violations with all information known to that person about the violation within 30 days after the date on which the person first obtained the information.

(2) The person fully cooperated with any investigation by the state or a political subdivision of the violation.

(3) At the time the person furnished the state or the political subdivision with information about the violation, no criminal prosecution, civil action, or administrative action had commenced with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation.

(c) Liability under this section shall be joint and several for any act committed by two or more persons.

(d) This section does not apply to any controversy involving an amount of less than five hundred dollars ($500) in value. For purposes of this subdivision, “controversy” means any one or more false claims submitted by the same person in violation of this article.

(e) This section does not apply to claims, records, or statements made pursuant to Division 3.6 (commencing with Section 810) of Title 1 or to workers' compensation claims filed pursuant to Division 4 (commencing with Section 3200) of the Labor Code.

(f) This section does not apply to claims, records, or statements made under the Revenue and Taxation Code.

(g) This section does not apply to claims, records, or statements for the assets of a person that have been transferred to the Commissioner of Insurance, pursuant to Section 1011 of the Insurance Code.

§ 12652. Investigation and prosecution of violations involving state or political subdivision funds; actions by individuals acting as qui tam plaintiffs; jurisdiction; fund

(a)(1) The Attorney General shall diligently investigate violations under Section 12651 involving state funds. If the Attorney General finds that a person has violated or is violating Section 12651, the Attorney General may bring a civil action under this section against that person.

(2) If the Attorney General brings a civil action under this subdivision on a claim involving political subdivision funds as well as state funds, the Attorney General shall, on the same date that the complaint is filed in this action, serve by mail with “return receipt requested” a copy of the complaint on the appropriate prosecuting authority.

(3) The prosecuting authority shall have the right to intervene in an action brought by the Attorney General under this subdivision within 60 days after receipt of the complaint pursuant to paragraph (2). The court may permit intervention thereafter upon a showing that all of the requirements of Section 387 of the Code of Civil Procedure have been met.

(b)(1) The prosecuting authority of a political subdivision shall diligently investigate violations under Section 12651 involving political subdivision funds. If the prosecuting authority finds that a person has violated or is violating Section 12651, the prosecuting authority may bring a civil action under this section against that person.

(2) If the prosecuting authority brings a civil action under this section on a claim involving state funds as well as political subdivision funds, the prosecuting authority shall, on the same date that the complaint is filed in this action, serve a copy of the complaint on the Attorney General.

(3) Within 60 days after receiving the complaint pursuant to paragraph (2), the Attorney General shall do

either of the following:

(A) Notify the court that it intends to proceed with the action, in which case the Attorney General shall assume primary responsibility for conducting the action and the prosecuting authority shall have the right to continue as a party.

(B) Notify the court that it declines to proceed with the action, in which case the prosecuting authority shall have the right to conduct the action.

(c)(1) A person may bring a civil action for a violation of this article for the person and either for the State of California in the name of the state, if any state funds are involved, or for a political subdivision in the name of the political subdivision, if political subdivision funds are exclusively involved. The person bringing the action shall be referred to as the qui tam plaintiff. Once filed, the action may be dismissed only with the written consent of the court and the Attorney General or prosecuting authority of a political subdivision, or both, as appropriate under the allegations of the civil action, taking into account the best interests of the parties involved and the public purposes behind this act. No claim for any violation of Section 12651 may be waived or released by any private person, except if the action is part of a court approved settlement of a false claim civil action brought under this section. Nothing in this paragraph shall be construed to limit the ability of the state or political subdivision to decline to pursue any claim brought under this section.

(2) A complaint filed by a private person under this subdivision shall be filed in superior court in camera and may remain under seal for up to 60 days. No service shall be made on the defendant until after the complaint is unsealed.

(3) On the same day as the complaint is filed pursuant to paragraph (2), the qui tam plaintiff shall serve by mail with “return receipt requested” the Attorney General with a copy of the complaint and a written disclosure of substantially all material evidence and information the person possesses.

(4) Within 60 days after receiving a complaint and written disclosure of material evidence and information alleging violations that involve state funds but not political subdivision funds, the Attorney General may elect to intervene and proceed with the action.

(5) The Attorney General may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal pursuant to paragraph (2). The motion may be supported by affidavits or other submissions in camera.

(6) Before the expiration of the 60-day period or any extensions obtained under paragraph (5), the Attorney General shall do either of the following:

(A) Notify the court that it intends to proceed with the action, in which case the action shall be conducted by

the Attorney General and the seal shall be lifted.

(B) Notify the court that it declines to proceed with the action, in which case the seal shall be lifted and the qui tam plaintiff shall have the right to conduct the action.

(7)(A) Within 15 days after receiving a complaint alleging violations that exclusively involve political subdivision funds, the Attorney General shall forward copies of the complaint and written disclosure of material evidence and information to the appropriate prosecuting authority for disposition, and shall notify the qui tam plaintiff of the transfer.

(B) Within 45 days after the Attorney General forwards the complaint and written disclosure pursuant to subparagraph (A), the prosecuting authority may elect to intervene and proceed with the action.

(C) The prosecuting authority may, for good cause shown, move for extensions of the time during which the complaint remains under seal. The motion may be supported by affidavits or other submissions in camera.

(D) Before the expiration of the 45-day period or any extensions obtained under subparagraph (C), the prosecuting authority shall do either of the following:

(i) Notify the court that it intends to proceed with the action, in which case the action shall be conducted by the prosecuting authority and the seal shall be lifted.

(ii) Notify the court that it declines to proceed with the action, in which case the seal shall be lifted and the qui tam plaintiff shall have the right to conduct the action.

(8)(A) Within 15 days after receiving a complaint alleging violations that involve both state and political subdivision funds, the Attorney General shall forward copies of the complaint and written disclosure to the appropriate prosecuting authority, and shall coordinate its review and investigation with those of the prosecuting authority.

(B) Within 60 days after receiving a complaint and written disclosure of material evidence and information alleging violations that involve both state and political subdivision funds, the Attorney General or the prosecuting authority, or both, may elect to intervene and proceed with the action.

(C) The Attorney General or the prosecuting authority, or both, may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). The motion may be supported by affidavits or other submissions in camera.

(D) Before the expiration of the 60-day period or any extensions obtained under subparagraph (C), the Attor-

ney General shall do one of the following:

(i) Notify the court that it intends to proceed with the action, in which case the action shall be conducted by the Attorney General and the seal shall be lifted.

(ii) Notify the court that it declines to proceed with the action but that the prosecuting authority of the political subdivision involved intends to proceed with the action, in which case the seal shall be lifted and the action shall be conducted by the prosecuting authority.

(iii) Notify the court that both it and the prosecuting authority decline to proceed with the action, in which case the seal shall be lifted and the qui tam plaintiff shall have the right to conduct the action.

(E) If the Attorney General proceeds with the action pursuant to clause (i) of subparagraph (D), the prosecuting authority of the political subdivision shall be permitted to intervene in the action within 60 days after the Attorney General notifies the court of its intentions. The court may authorize intervention thereafter upon a showing that all the requirements of Section 387 of the Code of Civil Procedure have been met.

(9) The defendant shall not be required to respond to any complaint filed under this section until 30 days after the complaint is unsealed and served upon the defendant pursuant to Section 583.210 of the Code of Civil Procedure.

(10) When a person brings an action under this subdivision, no other person may bring a related action based on the facts underlying the pending action.

(d)(1) No court shall have jurisdiction over an action brought under subdivision (c) against a Member of the State Senate or Assembly, a member of the state judiciary, an elected official in the executive branch of the state, or a member of the governing body of any political subdivision if the action is based on evidence or information known to the state or political subdivision when the action was brought.

(2) A person may not bring an action under subdivision (c) that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil money penalty proceeding in which the state or political subdivision is already a party.

(3)(A) No court shall have jurisdiction over an action under this article based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in an investigation, report, hearing, or audit conducted by or at the request of the Senate, Assembly, auditor, or governing body of a political subdivision, or by the news media, unless the action is brought by the Attorney General or the prosecuting authority of a political subdivision, or the person bringing the action is an original source of the information.

(B) For purposes of subparagraph (A), “original source” means an individual who has direct and independent

knowledge of the information on which the allegations are based, who voluntarily provided the information to the state or political subdivision before filing an action based on that information, and whose information provided the basis or catalyst for the investigation, hearing, audit, or report that led to the public disclosure as described in subparagraph (A).

(4) No court shall have jurisdiction over an action brought under subdivision (c) based upon information discovered by a present or former employee of the state or a political subdivision during the course of his or her employment unless that employee first, in good faith, exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and unless the state or political subdivision failed to act on the information provided within a reasonable period of time.

(e)(1) If the state or political subdivision proceeds with the action, it shall have the primary responsibility for prosecuting the action. The qui tam plaintiff shall have the right to continue as a full party to the action.

(2)(A) The state or political subdivision may seek to dismiss the action for good cause notwithstanding the objections of the qui tam plaintiff if the qui tam plaintiff has been notified by the state or political subdivision of the filing of the motion and the court has provided the qui tam plaintiff with an opportunity to oppose the motion and present evidence at a hearing.

(B) The state or political subdivision may settle the action with the defendant notwithstanding the objections of the qui tam plaintiff if the court determines, after a hearing providing the qui tam plaintiff an opportunity to present evidence, that the proposed settlement is fair, adequate, and reasonable under all of the circumstances.

(f)(1) If the state or political subdivision elects not to proceed, the qui tam plaintiff shall have the same right to conduct the action as the Attorney General or prosecuting authority would have had if it had chosen to proceed under subdivision (c). If the state or political subdivision so requests, and at its expense, the state or political subdivision shall be served with copies of all pleadings filed in the action and supplied with copies of all deposition transcripts.

(2)(A) Upon timely application, the court shall permit the state or political subdivision to intervene in an action with which it had initially declined to proceed if the interest of the state or political subdivision in recovery of the property or funds involved is not being adequately represented by the qui tam plaintiff.

(B) If the state or political subdivision is allowed to intervene under paragraph (A), the qui tam plaintiff shall retain principal responsibility for the action and the recovery of the parties shall be determined as if the state or political subdivision had elected not to proceed.

(g)(1)(A) If the Attorney General initiates an action pursuant to subdivision (a) or assumes control of an action initiated by a prosecuting authority pursuant to subparagraph (A) of paragraph (3) of subdivision (b), the office of the Attorney General shall receive a fixed 33 percent of the proceeds of the action or settlement of the claim, which shall be used to support its ongoing investigation and prosecution of false claims.

(B) If a prosecuting authority initiates and conducts an action pursuant to subdivision (b), the office of the prosecuting authority shall receive a fixed 33 percent of the proceeds of the action or settlement of the claim, which shall be used to support its ongoing investigation and prosecution of false claims.

(C) If a prosecuting authority intervenes in an action initiated by the Attorney General pursuant to paragraph (3) of subdivision (a) or remains a party to an action assumed by the Attorney General pursuant to subparagraph (A) of paragraph (3) of subdivision (b), the court may award the office of the prosecuting authority a portion of the Attorney General's fixed 33 percent of the recovery under subparagraph (A), taking into account the prosecuting authority's role in investigating and conducting the action.

(2) If the state or political subdivision proceeds with an action brought by a qui tam plaintiff under subdivision (c), the qui tam plaintiff shall, subject to paragraphs (4) and (5), receive at least 15 percent but not more than 33 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the qui tam plaintiff substantially contributed to the prosecution of the action. When it conducts the action, the Attorney General's office or the office of the prosecuting authority of the political subdivision shall receive a fixed 33 percent of the proceeds of the action or settlement of the claim, which shall be used to support its ongoing investigation and prosecution of false claims made against the state or political subdivision. When both the Attorney General and a prosecuting authority are involved in a qui tam action pursuant to subparagraph (C) of paragraph (6) of subdivision (c), the court at its discretion may award the prosecuting authority a portion of the Attorney General's fixed 33 percent of the recovery, taking into account the prosecuting authority's contribution to investigating and conducting the action.

(3) If the state or political subdivision does not proceed with an action under subdivision (c), the qui tam plaintiff shall, subject to paragraphs (4) and (5), receive an amount that the court decides is reasonable for collecting the civil penalty and damages on behalf of the government. The amount shall be not less than 25 percent and not more than 50 percent of the proceeds of the action or settlement and shall be paid out of these proceeds.

(4) If the action is one provided for under paragraph (4) of subdivision (d), the present or former employee of the state or political subdivision is not entitled to any minimum guaranteed recovery from the proceeds. The court, however, may award the qui tam plaintiff those sums from the proceeds as it considers appropriate, but in no case more than 33 percent of the proceeds if the state or political subdivision goes forth with the action or 50 percent if the state or political subdivision declines to go forth, taking into account the significance of the information, the role of the qui tam plaintiff in advancing the case to litigation, and the scope of, and response to, the employee's attempts to report and gain recovery of the falsely claimed funds through official channels.

(5) If the action is one that the court finds to be based primarily on information from a present or former employee who actively participated in the fraudulent activity, the employee is not entitled to any minimum guaranteed recovery from the proceeds. The court, however, may award the qui tam plaintiff any sums from the proceeds that it considers appropriate, but in no case more than 33 percent of the proceeds if the state or political subdivision goes forth with the action or 50 percent if the state or political subdivision declines to go

forth, taking into account the significance of the information, the role of the qui tam plaintiff in advancing the case to litigation, the scope of the present or past employee's involvement in the fraudulent activity, the employee's attempts to avoid or resist the activity, and all other circumstances surrounding the activity.

(6) The portion of the recovery not distributed pursuant to paragraphs (1) to (5), inclusive, shall revert to the state if the underlying false claims involved state funds exclusively and to the political subdivision if the underlying false claims involved political subdivision funds exclusively. If the violation involved both state and political subdivision funds, the court shall make an apportionment between the state and political subdivision based on their relative share of the funds falsely claimed.

(7) For purposes of this section, “proceeds” include civil penalties as well as double or treble damages as provided in Section 12651.

(8) If the state, political subdivision, or the qui tam plaintiff prevails in or settles any action under subdivision (c), the qui tam plaintiff shall receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable costs and attorney's fees. All expenses, costs, and fees shall be awarded against the defendant and under no circumstances shall they be the responsibility of the state or political subdivision.

(9) If the state, a political subdivision, or the qui tam plaintiff proceeds with the action, the court may award to the defendant its reasonable attorney's fees and expenses against the party that proceeded with the action if the defendant prevails in the action and the court finds that the claim was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(h) The court may stay an act of discovery of the person initiating the action for a period of not more than 60 days if the Attorney General or local prosecuting authority show that the act of discovery would interfere with an investigation or a prosecution of a criminal or civil matter arising out of the same facts, regardless of whether the Attorney General or local prosecuting authority proceeds with the action. This showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the Attorney General or local prosecuting authority has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(i) Upon a showing by the Attorney General or local prosecuting authority that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Attorney General's or local prosecuting authority's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, including the following:

(1) Limiting the number of witnesses the person may call.

(2) Limiting the length of the testimony of the witnesses.

(3) Limiting the person's cross-examination of witnesses.

(4) Otherwise limiting the participation by the person in the litigation.

(j) The False Claims Act Fund is hereby created in the State Treasury. Proceeds from the action or settlement of the claim by the Attorney General pursuant to this article shall be deposited into this fund. Moneys in this fund, upon appropriation by the Legislature, shall be used by the Attorney General to support the ongoing investigation and prosecution of false claims in furtherance of this article.

§ 12652.5. University of California as political subdivision; prosecuting authority of general counsel

Notwithstanding any other provision of law, the University of California shall be considered a political subdivision, and the General Counsel of the University of California shall be considered a prosecuting authority for the purposes of this article, and shall have the right to intervene in an action brought by the Attorney General or a private party or investigate and bring an action, subject to Section 12652, if it is determined that the claim involves the University of California.

§ 12653. Employer interference with employee disclosures, etc.; liability of employer; remedies of employee

(a) No employer shall make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency or from acting in furtherance of a false claims action, including investigating, initiating, testifying, or assisting in an action filed or to be filed under Section 12652.

(b) No employer shall discharge, demote, suspend, threaten, harass, deny promotion to, or in any other manner discriminate against, an employee in the terms and conditions of employment because of lawful acts done by the employee on behalf of the employee or others in disclosing information to a government or law enforcement agency or in furthering a false claims action, including investigation for, initiation of, testimony for, or assistance in, an action filed or to be filed under Section 12652.

(c) An employer who violates subdivision (b) shall be liable for all relief necessary to make the employee whole, including reinstatement with the same seniority status that the employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay, compensation for any special damage sustained as a result of the discrimination, and, where appropriate, punitive damages. In addition, the defendant shall be required to pay litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate superior court of the state for the relief provided in this subdivision.

(d) An employee who is discharged, demoted, suspended, harassed, denied promotion, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of participation in conduct which directly or indirectly resulted in a false claim being submitted to the state or a political subdivision shall be entitled to the remedies under subdivision (c) if, and only if, both of the following occur:

(1) The employee voluntarily disclosed information to a government or law enforcement agency or acted in furtherance of a false claims action, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed.

(2) The employee had been harassed, threatened with termination or demotion, or otherwise coerced by the employer or its management into engaging in the fraudulent activity in the first place.

§ 12654. Limitation of actions; actions for activity prior to January 1, 1988; burden of proof; criminal proceedings charging false statements or fraud; estoppel; application of privileged publication statute

(a) A civil action under Section 12652 may not be filed more than three years after the date of discovery by the Attorney General or prosecuting authority with jurisdiction to act under this article or, in any event, not more than 10 years after the date on which the violation of Section 12651was committed.

(b) A civil action under Section 12652 may be brought for activity prior to January 1, 1988, if the limitations period set in subdivision (a) has not lapsed.

(c) In any action brought under Section 12652, the state, the political subdivision, or the qui tam plaintiff shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(d) Notwithstanding any other provision of law, a guilty verdict rendered in a criminal proceeding charging false statements or fraud, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, except for a plea of nolo contendere made prior to January 1, 1988, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under subdivision (a), (b), or (c) of Section 12652.

(e) Subdivision (b) of Section 47 of the Civil Code shall not be applicable to any claim subject to this article.

§ 12655. Remedies under other laws; severability of provisions; liberality of article construction

(a) The provisions of this article are not exclusive, and the remedies provided for in this article shall be in addition to any other remedies provided for in any other law or available under common law.

(b) If any provision of this article or the application thereof to any person or circumstance is held to be unconstitutional, the remainder of the article and the application of the provision to other persons or circumstances shall not be affected thereby.

(c) This article shall be liberally construed and applied to promote the public interest.

§ 12656. Commencement of action for violation, application or construction of this article; service of copies of notice or petition initiating proceeding on Attorney General; time requirements for filing; extensions

(a) If a violation of this article is alleged or the application or construction of this article is in issue in any proceeding in the Supreme Court of California, a state court of appeal, or the appellate division of a superior court, the person or political subdivision that commenced that proceeding shall serve a copy of the notice or petition initiating the proceeding, and a copy of each paper, including briefs, that the person or political subdivision files in the proceeding within three days of the filing, on the Attorney General, directed to the attention of the False Claims Section in Sacramento, California.

(b) Timely compliance with the three-day time period is a jurisdictional prerequisite to the entry of judgment, order, or decision construing or applying this article by the court in which the proceeding occurs, except that within that three-day period or thereafter, the time for compliance may be extended by the court for good cause.

(c) The court shall extend the time period within which the Attorney General is permitted to respond to an action subject to this section by at least the same period of time granted for good cause pursuant to subdivision (b) to the person or political subdivision that commenced the proceeding.

END OF DOCUMENT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

JUL 24 2008

Doug Colburn
Inspector General
Office of Inspector General
Georgia Department of Community Health
2 Peachtree Street, NW
Atlanta, Georgia 30303-3159

Dear Mr. Colburn:

The Office of Inspector General (OIG) of the U.S. Department of Health and Human Services (HHS) has received your request to review the Georgia State False Claims Act, Ga. Code Ann. §§ 49-4-168 through 49-4-168.6, under the requirements of section 6031(b) of the Deficit Reduction Act (DRA). Section 6031 of the DRA provides a financial incentive for states to enact laws that establish liability to the state for individuals and entities that submit false or fraudulent claims to the state Medicaid program. For a state to qualify for this incentive, the state law must meet certain requirements enumerated under section 6031(b) of the DRA, as determined by the Inspector General of HHS in consultation with the Department of Justice (DOJ). Based on our review of the law and consultation with DOJ, we have determined that the Georgia State False Claims Act meets the requirements of section 6031(b) of the DRA.

Please note that a state that has a law in effect that OIG has determined meets the requirements of section 6031(b) of the DRA will be deemed in compliance with such requirements for so long as the law continues to meet such requirements. We would appreciate it if you would notify OIG of any amendment to the Georgia State False Claims Act within 30 days after such amendment.

If you have any questions regarding this review, please contact me, or your staff may contact Brian Bewley at (202) 401-4135 or brian.bewley@oig.hhs.gov.

Sincerely,

Daniel R. Levinson

Daniel R. Levinson
Inspector General

cc: Aaron Blight, CMS

West's Code of Georgia Annotated Currentness
Title 49. Social Services (Refs & Annos)
Chapter 4. Public Assistance (Refs & Annos)
Article 7B. False Medicaid Claims (Refs & Annos)
§ 49-4-168. Definitions

As used in this article, the term:

(1) “Claim” includes any request or demand, whether under a contract or otherwise, for money, property, or services, which is made to the Georgia Medicaid program, or to any officer, employee, fiscal intermediary, grantee or contractor of the Georgia Medicaid program, or to other persons or entities if it results in payments by the Georgia Medicaid program, if the Georgia Medicaid program provides or will provide any portion of the money or property requested or demanded, or if the Georgia Medicaid program will reimburse the contractor, grantee, or other recipient for any portion of the money or property requested or demanded. A claim includes a request or demand made orally, in writing, electronically, or magnetically. Each claim may be treated as a separate claim.

(2) “Knowing” and “knowingly” mean that a person, with respect to information:

(A) Has actual knowledge of the information;

(B) Acts in deliberate ignorance of the truth or falsity of the information; or

(C) Acts in reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required.

(3) “Person” means any natural person, corporation, company, association, firm, partnership, society, joint-stock company, or any other entity with capacity to sue or be sued.

CREDIT(S)

Laws 2007, Act 220, § 3, eff. May 24, 2007.

HISTORICAL AND STATUTORY NOTES

Laws 2007, Act 220, §§ 1 and 2, provide:

"SECTION 1. This Act shall be known and may be cited as the 'State False Medicaid Claims Act.'

"SECTION 2. The General Assembly recognizes that the submission of false or fraudulent claims to the Georgia Medicaid program can and does cause the state treasury to incur serious financial losses which results in direct harm to the taxpayers of this state. This Act is intended to provide a partial remedy for this problem by providing specific procedures whereby this state, and private citizens acting for and on behalf of this state, may bring civil actions against persons and entities who have obtained state funds through the submission of false or fraudulent claims to state agencies. This Act, in its provision for double and sometimes treble damages, is remedial in purpose, and is intended not to punish, but insofar as possible to make the state treasury whole for both the direct and indirect losses caused by the submission of false or fraudulent claims resulting in payments by this state or state agencies. By receiving a portion of the recovery in civil actions brought under this article, 'whistle blowers' are encouraged to come forward when they have information about the submission of false claims to the Georgia Medicaid program, and rewarded when their initiative results in civil recoveries for this state."

RESEARCH REFERENCES

Treatises and Practice Aids

Elder Care & Nursing Home Litigation in Georgia § 5:2, Medicare/Medicaid Billing Fraud--The False Claims Act.

Ga. Code Ann., § 49-4-168, GA ST § 49-4-168

Current through the 2009 Regular Session.

END OF DOCUMENT

West's Code of Georgia Annotated Currentness
Title 49. Social Services (Refs & Annos)
Chapter 4. Public Assistance (Refs & Annos)
Article 7B. False Medicaid Claims (Refs & Annos)

§ 49-4-168.1. False or fraudulent claims; penalties; liability for costs of civil action

(a) Any person who:

(1) Knowingly presents or causes to be presented to the Georgia Medicaid program a false or fraudulent claim for payment or approval;

(2) Knowingly makes, uses, or causes to be made or used a false record or statement to get a false or fraudulent claim paid or approved by the Georgia Medicaid program;

(3) Conspires to defraud the Georgia Medicaid program by getting a false or fraudulent claim allowed or paid;

(4) Has possession, custody, or control of property or money used or to be used by the Georgia Medicaid program and, intending to defraud the Georgia Medicaid program or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate of receipt;

(5) Being authorized to make or deliver a document certifying receipt of property used, or to be used, by the Georgia Medicaid program and, intending to defraud the Georgia Medicaid program, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(6) Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Georgia Medicaid program who lawfully may not sell or pledge the property; or

(7) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay, repay, or transmit money or property to the State of Georgia

shall be liable to the State of Georgia for a civil penalty of not less than $5,500.00 and not more than $11,000.00 for each false or fraudulent claim, plus three times the amount of damages which the Georgia Medicaid program sustains because of the act of such person.

(b) The provisions of subsection (a) of this Code section notwithstanding, if the court finds that:

(1) The person committing the violation of this subsection furnished officials of the Georgia Medicaid program with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;

(2) Such person fully cooperated with any government investigation of such violation; and

(3) At the time such person furnished the Georgia Medicaid program with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this article with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation,

the court may assess not more than two times the amount of the actual damages which the Georgia Medicaid program sustained because of the act of such person.

(c) A person violating any provision of subsection (a) of this Code section shall also be liable to this state for all costs of any civil action brought to recover the damages and penalties provided under this article.

CREDIT(S)

Laws 2007, Act 220, § 3, eff. May 24, 2007; Laws 2009, Act 8, § 49, eff. April 14, 2009.

HISTORICAL AND STATUTORY NOTES

In 2007, the Code Commission, in subsec. (c), substituted “subsection (a) of this Code section” for “this subsection”. See § 28-9-5.

RESEARCH REFERENCES

Treatises and Practice Aids

Elder Care & Nursing Home Litigation in Georgia § 5:2, Medicare/Medicaid Billing Fraud--The False Claims Act.

Ga. Code Ann., § 49-4-168.1, GA ST § 49-4-168.1

Current through the 2009 Regular Session.

END OF DOCUMENT

West's Code of Georgia Annotated Currentness
Title 49. Social Services (Refs & Annos)
Chapter 4. Public Assistance (Refs & Annos)
Article 7B. False Medicaid Claims (Refs & Annos)

§ 49-4-168.2. Investigation of violations; civil action brought by Attorney General or private person

(a) The Attorney General shall be authorized to investigate suspected, alleged, and reported violations of this article. If the Attorney General finds that a person has violated or is violating this article, then the Attorney General may bring a civil action against such person under this article.

(b) Subject to the exclusions set forth in this Code section, a civil action under this article may also be brought by a private person. A civil action shall be brought in the name of the State of Georgia. The civil action may be dismissed only if the court and the Attorney General give written consent to the dismissal and state the reasons for consenting to such dismissal.

(c) Where a private person brings a civil action under this article, such person shall follow the following special procedures:

(1) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Attorney General;

(2) The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The purpose of the period under seal shall be to allow the Attorney General to investigate the allegations of the complaint. The Attorney General may elect to intervene and proceed with the civil action within 60 days after it receives both the complaint and the material evidence and information;

(3) The Attorney General may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2) of this subsection. Any such motions may be supported by affidavits or other submissions in camera;

(4) Before the expiration of the 60 day period or any extensions obtained under paragraph (3) of this subsection, the Attorney General shall:

(A) Proceed with the civil action, in which case the civil action shall be conducted by the Attorney General;

or

(B) Notify the court that it declines to take over the civil action, in which case the person bringing the civil action shall have the right to proceed with the civil action;

(5) The defendant shall not be required to respond to any complaint filed under this Code section until 30 days after the complaint is unsealed and served upon the defendant; and

(6) When a person brings a civil action under this subsection, no person other than the Attorney General may intervene or bring a related civil action based on the facts underlying the pending civil action.

(d)(1) If the Attorney General elects to intervene and proceed with the civil action, he or she shall have the primary responsibility for prosecuting the civil action and shall not be bound by an act of the person bringing such civil action. Such person shall have the right to continue as a party to the civil action, subject to the limitations set forth in this subsection.

(2) The Attorney General may dismiss the civil action, notwithstanding the objections of the person initiating the civil action, if the person has been notified by the Attorney General of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

(3) The Attorney General may settle the civil action with the defendant notwithstanding the objections of the person initiating the civil action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(4) Upon a showing by the Attorney General that unrestricted participation during the course of the litigation by the person initiating the civil action would interfere with or unduly delay the Attorney General's litigation of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as:

(A) Limiting the number of witnesses the person may call;

(B) Limiting the length of the testimony of such witnesses;

(C) Limiting the person's cross-examination of witnesses; or

(D) Otherwise limiting the participation by the person in the litigation.

(e) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the per-

son initiating the civil action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(f) If the Attorney General elects not to proceed with the civil action, the person who initiated the civil action shall have the right to conduct the civil action. If the Attorney General so requests, he or she shall be served with copies of all pleadings filed in the civil action and shall be supplied with copies of all deposition transcripts. When a person proceeds with the civil action, the court may nevertheless permit the Attorney General to intervene at a later date for any purpose, including, but not limited to, dismissal of the civil action notwithstanding the objections of the person initiating the civil action if such person has been notified by the Attorney General of the filing of such motion and the court has provided such person with an opportunity for a hearing on such mo- tion.

(g) Whether or not the Attorney General proceeds with the civil action, upon a showing by the Attorney General that certain actions of discovery by the person initiating the civil action would interfere with the Attorney General's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60 day period upon a further showing in camera that the Attorney General has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(h) Notwithstanding subsections (b) and (c) of this Code section, the Attorney General may elect to pursue this state's claim through any alternate remedy available to the Attorney General, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the civil action shall have the same rights in such proceeding as such person would have had if the civil action had continued under this Code section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to a civil action under this Code section. For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the State of Georgia, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(i)(1) If the Attorney General proceeds with a civil action brought by a private person under subsection (b) of this Code section, such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the civil action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the civil action. Where the civil action is one which the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the civil action, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or Attorney General hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing such civil action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. The remaining proceeds shall be payable to the Indigent Care Trust Fund to be used for the purposes set forth in Code Section 31-8-154. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reason-

able attorney's fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) If the Attorney General does not proceed with a civil action under this Code section, the person bringing the civil action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. Such amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the civil action or settlement and shall be paid out of such proceeds. The remaining proceeds shall be payable to the Indigent Care Trust Fund to be used for the purposes set forth in Code Section 31-8-154. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the Attorney General proceeds with the civil action, if the court finds that the civil action was brought by a person who planned and initiated the violation of Code Section 49-4-168.1 upon which the civil action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the civil action which the person would otherwise receive under paragraph (1) or (2) of this subsection, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the civil action is convicted of criminal conduct arising from his or her role in the violation of Code Section 49-4-168.1, such person shall be dismissed from the civil action and shall not receive any share of the proceeds of the civil action. Such dismissal shall not prejudice the right of the State of Georgia to continue the civil action, represented by the Attorney General.

(4) If the Attorney General does not proceed with the civil action and the person bringing the civil action conducts the civil action, the court may award to the defendant its reasonable attorney's fees and expenses against the person bringing the civil action if the defendant prevails in the civil action and the court finds that the claim of the person bringing the civil action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(5) The State of Georgia shall not be liable for expenses which a private person incurs in bringing a civil action under this article.

(j) For purposes of this subsection, “public employee,” “public official,” and “public employment” shall include federal, state, and local employees and officials.

(1) No civil action may be brought under this article by a person who is or was a public employee or public official if the allegations of such action are substantially based upon:

(A) Allegations of wrongdoing or misconduct which such person had a duty or obligation to report or investigate within the scope of his or her public employment or office; or

(B) Information or records to which such person had access as a result of his or her public employment or office.

(2) No court shall have jurisdiction over a civil action under this article based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or Attorney General report, hearing, audit, or investigation, or from the news media, unless the civil action is brought by the Attorney General or unless the person bringing the civil action is an original source of the information. For purposes of this paragraph, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to this state before filing a civil action under this Code section based on such information.

(3) In no event may a person bring a civil action under this article which is based upon allegations or transactions which are the subject of a civil or administrative proceeding to which the State of Georgia is already party.

(4) No civil action may be brought under this article with respect to any claim relating to the assessment, payment, nonpayment, refund or collection of taxes pursuant to any provisions of Title 48.

CREDIT(S)

Laws 2007, Act 220, § 3, eff. May 24, 2007; Laws 2009, Act 8, § 49, eff. April 14, 2009.

RESEARCH REFERENCES

Treatises and Practice Aids

Elder Care & Nursing Home Litigation in Georgia § 5:2, Medicare/Medicaid Billing Fraud--The False Claims Act.

Ga. Code Ann., § 49-4-168.2, GA ST § 49-4-168.2

Current through the 2009 Regular Session.

END OF DOCUMENT

West's Code of Georgia Annotated Currentness
Title 49. Social Services (Refs & Annos)
Chapter 4. Public Assistance (Refs & Annos)
Article 7B. False Medicaid Claims (Refs & Annos)
§ 49-4-168.3. Standard of proof; actions governed by Civil Procedure Act

(a) In any civil action brought under this article, the State of Georgia or person bringing the civil action shall be required to prove all essential elements of the cause of civil action, including damages, by a preponderance of the evidence.

(b) Except as otherwise provided in this article, all civil actions brought under this article shall be governed by the provisions of Chapter 11 of Title 9, the "Georgia Civil Practice Act."

CREDIT(S)

Laws 2007, Act 220, § 3, eff. May 24, 2007.

RESEARCH REFERENCES

Treatises and Practice Aids

Elder Care & Nursing Home Litigation in Georgia § 5:2, Medicare/Medicaid Billing Fraud--The False Claims Act.

Ga. Code Ann., § 49-4-168.3, GA ST § 49-4-168.3

Current through the 2009 Regular Session.

END OF DOCUMENT

West's Code of Georgia Annotated Currentness
Title 49. Social Services (Refs & Annos)
Chapter 4. Public Assistance (Refs & Annos)
Article 7B. False Medicaid Claims (Refs & Annos)

§ 49-4-168.4. Discrimination against employee for lawful acts in furtherance of civil action under article; relief

Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee, on behalf of the employee or others, in furtherance of a civil action under this article, including investigation for, initiation of, testimony for, or assistance in a civil action filed or to be filed under this article, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay award, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees. An employee may bring a civil action in an appropriate court of the State of Georgia for the relief provided in this Code section.

CREDIT(S)

Laws 2007, Act 220, § 3, eff. May 24, 2007.

RESEARCH REFERENCES

Treatises and Practice Aids

Elder Care & Nursing Home Litigation in Georgia § 5:2, Medicare/Medicaid Billing Fraud--The False Claims Act.

Ga. Code Ann., § 49-4-168.4, GA ST § 49-4-168.4

Current through the 2009 Regular Session.

END OF DOCUMENT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

MAR 13 2007

The Honorable Mark J. Bennett
Attorney General
State of Hawaii
425 Queen Street
Honolulu, Hawaii 96813

Dear Attorney General:

The Office of Inspector General (OIG) of the U.S. Department of Health and Human Services (HHS) has received your request to review Hawaii's false claims statute, Haw. Rev. Stat. §§ 661-21 to -29, along with Hawaii's Whistleblowers' Protection Act, Haw. Rev. Stat. §§ 378-61 to -69, under the requirements of section 6031(b) of the Deficit Reduction Act (DRA). Section 6031 of the DRA provides a financial incentive for States to enact laws that establish liability to the State for individuals and entities that submit false or fraudulent claims to the State Medicaid program. For a State to qualify for this incentive, the State law must meet certain requirements enumerated under section 6031(b) of the DRA, as determined by the Inspector General of HHS in consultation with the Department of Justice (DOJ). Based on our review of Hawaii's laws and in consultation with DOJ, we have determined that Hawaii's laws meet the requirements of section 6031(b) of the DRA.

Please note that a State that has a law in effect that meets the requirements of section 6031(b) of the DRA will be deemed in compliance with such requirements for so long as the law continues to meet such requirements. We would appreciate it if you would notify the OIG of any amendment to Hawaii's laws within 30 days after such amendment.

If you have any questions regarding this review, please contact me, or your staff may contact Katie Arnholt at (202) 619-2078 or Katie.Arnholt@oig.hhs.gov.

Sincerely,

Daniel R. Levinson

Daniel R. Levinson
Inspector General

cc: Aaron Blight, CMS

West's Hawai‘i Revised Statutes Annotated Currentness
Division 4. Courts and Judicial Proceedings
Title 36. Civil Remedies and Defenses and Special Proceedings
Chapter 661. Actions by and Against the State
[Part II]. Qui Tam Actions or Recovery of False Claims to the State
§ 661-21. Actions for false claims to the State; qui tam actions

(a) Notwithstanding section 661-7 to the contrary, any person who:

(1) Knowingly presents, or causes to be presented, to an officer or employee of the State a false or fraudulent claim for payment or approval;

(2) Knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the State;

(3) Conspires to defraud the State by getting a false or fraudulent claim allowed or paid;

(4) Has possession, custody, or control of property or money used, or to be used, by the State and, intending to defraud the State or wilfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;

(5) Is authorized to make or deliver a document certifying receipt of property used, or to be used by the State and, intending to defraud the State, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(6) Knowingly buys, or receives as a pledge of an obligation or debt, public property from any officer or employee of the State who may not lawfully sell or pledge the property;

(7) Knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the State; or

(8) Is a beneficiary of an inadvertent submission of a false claim to the State, who subsequently discovers the falsity of the claim, and fails to disclose the false claim to the State within a reasonable time after discovery of the false claim;

shall be liable to the State for a civil penalty of not less than $5,000 and not more than $10,000, plus three times the amount of damages that the State sustains due to the act of that person.

(b) If the court finds that a person who has violated subsection (a):

(1) Furnished officials of the State responsible for investigating false claims violations with all information known to the person about the violation within thirty days after the date on which the defendant first obtained the information;

(2) Fully cooperated with any state investigation of such violation; and

(3) At the time the person furnished the State with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation;

the court may assess not less than two times the amount of damages that the State sustains because of the act of the person. A person violating subsection (a), shall also be liable to the State for the costs and attorneys' fees of a civil action brought to recover the penalty or damages.

(c) Liability under this section shall be joint and several for any act committed by two or more persons.

(d) This section shall not apply to any controversy involving an amount of less than $500 in value. For purposes of this subsection, “controversy” means the aggregate of any one or more false claims submitted by the same person in violation of this part. Proof of specific intent to defraud is not required.

(e) For purposes of this section:

“Claim” includes any request or demand, whether under a contract or otherwise, for money or property that is made to a contractor, grantee, or other recipient if the State provides any portion of the money or property that is requested or demanded, or if the government will reimburse the contractor, grantee, or other recipient for any portion of the money or property that is requested or demanded.

“Knowing” and “knowingly” means that a person, with respect to information:

(1) Has actual knowledge of the information;

(2) Acts in deliberate ignorance of the truth or falsity of the information; or

(3) Acts in reckless disregard of the truth or falsity of the information;

and no proof of specific intent to defraud is required.

(f) This section shall not apply to claims, records, or statements for which procedures and remedies are otherwise specifically provided for under chapter 231.

[§ 661-22]. Civil actions for false claims

The attorney general shall investigate any violation under section 661-21. If the attorney general finds that a person has violated or is violating section 661-21, the attorney general may bring a civil action under this section.

§ 661-23. Evidentiary determination; burden of proof

A determination that a person has violated the provisions of this part shall be based on a preponderance of the evidence.

§ 661-24. Statute of limitations

An action for false claims to the State pursuant to this part shall be brought within six years after the false claim is discovered or by exercise of reasonable diligence should have been discovered and, in any event, no more than ten years after the date on which the violation of section 661-21 is committed.

§ 661-25. Action by private persons

(a) A person may bring a civil action for a violation of section 661-21 for the person and for the State. The action shall be brought in the name of the State. The action may be dismissed only with the written consent of the court, taking into account the best interests of the parties involved and the public purposes behind this part.

(b) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the State in accordance with the Hawaii rules of civil procedure. The complaint shall be filed in camera, shall remain under seal for at least sixty days, and shall not be served on the defendant until the court so orders. The State may elect to intervene and proceed with the action within sixty days after it receives both the complaint and the material evidence and information.

(c) The State may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under subsection (b). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until twenty days after the complaint is unsealed and served upon the defendant in accordance with the Hawaii rules of civil procedure.

(d) Before the expiration of the sixty-day period or any extension obtained, the State shall:

(1) Proceed with the action, in which case the action shall be conducted by the State and the seal shall be lifted; or

(2) Notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action and the seal shall be lifted.

(e) When a person brings an action under this section, no person other than the State may intervene or bring a related action based on the facts underlying the pending action.

[§ 661-26]. Rights of parties to qui tam actions

(a) If the State proceeds with an action under section 661-25, the State shall have the primary responsibility for prosecuting the action and shall not be bound by an act of the person bringing the action. The person shall have the right to continue as a party to the action, subject to the following limitations:

(1) The State may dismiss the action notwithstanding the objections of the person initiating the action if the court determines, after a hearing on the motion, that dismissal should be allowed;

(2) The State may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable. Upon a showing of good cause, the hearing may be held in camera;

(3) The court, upon a showing by the State that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the State's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, may, in its discretion impose limitations on the person's participation by:

(A) Limiting the number of witnesses the person may call;

(B) Limiting the length of the testimony of the witnesses;

(C) Limiting the person's cross-examination of witnesses; or

(D) Otherwise limiting the participation by the person in the litigation.

(b) The defendant, by motion upon the court, may show that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense. At the court's discretion, the court may limit the participation by the person in the litigation.

(c) If the State elects not to proceed with the action, the person who initiated that action shall have the right to conduct the action. If the State so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts at the State's expense. When a person proceeds with the action, the court without limiting the status and rights of the person initiating the action, may nevertheless permit the State to intervene at a later date upon showing of good cause.

(d) Whether or not the State proceeds with the action, upon motion and a showing by the State that certain actions of discovery by the person initiating the action would interfere with the State's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay the discovery for a period of not more than sixty days. The court may extend the sixty-day period upon a motion and showing by the State that the State has pursued the investigation or prosecution of the criminal or civil matter with reasonable diligence and the proposed discovery would interfere with the ongoing investigation or prosecution of the criminal or civil matter.

(e) Notwithstanding section 661-25, the State may elect to pursue its claim through any alternate remedy available to the State, including any administrative proceedings to determine civil monetary penalties. If any alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in the proceedings as the person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in the other proceeding that becomes final shall be conclusive on all parties to an action under this section.

(f) Whether or not the State elects to proceed with the action, the parties to the action shall receive court approval of any settlements reached.

[§ 661-27]. Awards to qui tam plaintiffs

(a) If the State proceeds with an action brought by a person under section 661-25, the person shall receive at least fifteen per cent but not more than twenty-five per cent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one that the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, the court may award sums as it considers appropriate, but in no case more than ten per cent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under this subsection shall be made from the proceeds. [The] person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All expenses, fees, and costs shall be awarded against the defendant.

(b) If the State does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount that the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than twenty-five per cent and not more than thirty per cent of the proceeds of the

action or settlement and shall be paid out of the proceeds. The person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All expenses, fees, and costs shall be awarded against the defendant.

(c) Whether or not the State proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of section 661-21 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action that the person would otherwise receive under subsection (a), taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from the person's role in the violation of section 661-21, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. The dismissal shall not prejudice the right of the State to continue the action.

(d) If the State does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was frivolous, vexatious, or brought primarily for purposes of harassment.

(e) In no event may a person bring an action under section 661-25:

(1) Against a member of the state senate or state house of representatives, a member of the judiciary, or an elected official in the executive branch of the State, if the action is based on evidence or information known to the State. For purposes of this section, evidence or information known only to the person or persons against whom an action is brought shall not be considered to be known to the State;

(2) When the person is a present or former employee of the State and the action is based upon information discovered by the employee during the course of the employee's employment, unless the employee first, in good faith, exhausted any existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and the State failed to act on the information provided within a reasonable period of time; or

(3) That is based upon allegations or transactions that are the subject of a civil or criminal investigation by the State, civil suit, or an administrative civil money penalty proceeding in which the State is already a party.

[§ 661-28]. Jurisdiction

No court shall have jurisdiction over an action under this part based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, unless the action is brought by the attorney general or the person bringing the action is an original source of the information. For purposes of this section:

"Original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the State before filing an action under this part that is based on the information, and whose information provided the basis or catalyst for the investigation, hearing, audit, or report that led to the public disclosure.

[§ 661-29]. Fees and costs of litigation

The State shall not be liable for expenses or fees, including attorney fees, that a person incurs in bringing an action under this part and shall not elect to pay those expenses or fees.

END OF DOCUMENT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

DEC 21 2006

Ms. Lisa Madigan
Illinois Attorney General
Chicago Main Office
100 West Randolph Street
Chicago, Illinois 60601

Dear Ms. Madigan:

The Office of Inspector General (OIG) of the U.S. Department of Health and Human Services (HHS) has received your request to review the Illinois Whistleblower Reward and Protection Act, 740 Ill. Comp. Stat. §§ 175/1 – 175/8, under the requirements of section 6031(b) of the Deficit Reduction Act (DRA). Section 6031 of the DRA provides a financial incentive for states to enact laws that establish liability to the state for individuals and entities that submit false or fraudulent claims to the state Medicaid program. For a state to qualify for this incentive, the state law must meet certain requirements enumerated under section 6031(b) of the DRA, as determined by the Inspector General of HHS in consultation with the Department of Justice (DOJ). Based on our review of the law and consultation with DOJ, we have determined that the Illinois Whistleblower Reward and Protection Act meets the requirements of section 6031(b) of the DRA.

Please note that a state that has a law in effect that meets the requirements of section 6031(b) of the DRA as of January 1, 2007, will be deemed in compliance with such requirements for so long as the law continues to meet such requirements. We would appreciate it if you would notify OIG of any amendment to the Illinois Whistleblower Reward and Protection Act within 30 days after such amendment.

If you have any questions regarding this review, please contact me, or have your staff contact Karla Hampton at (202) 205-3158 or karla.hampton@oig.hhs.gov.

Sincerely,

Daniel R. Levinson

Daniel R. Levinson
Inspector General

cc: Aaron Blight, CMS

West's Smith-Hurd Illinois Compiled Statutes Annotated Currentness
Chapter 740. Civil Liabilities
➡ Act 175. Whistleblower Reward and Protection Act (Refs & Annos)
➡ **175/1. Short title**

§ 1. This Act may be cited as the Whistleblower Reward and Protection Act.

175/2. Definitions

§ 2. Definitions. As used in this Act:

(a) “State” means the State of Illinois; any agency of State government; the system of State colleges and universities, any school district, community college district, county, municipality, municipal corporation, unit of local government, and any combination of the above under an intergovernmental agreement that includes provisions for a governing body of the agency created by the agreement.

(b) “Guard” means the Illinois National Guard.

(c) “Investigation” means any inquiry conducted by any investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of this Act.

(d) “Investigator” means a person who is charged by the Department of State Police with the duty of conducting any investigation under this Act, or any officer or employee of the State acting under the direction and supervision of the Department of State Police, through the Division of Operations or the Division of Internal Investigation, in the course of an investigation.

(e) “Documentary material” includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations, and any product of discovery.

(f) “Custodian” means the custodian, or any deputy custodian, designated by the Attorney General under subsection (i)(1) of Section 6.

(g) “Product of discovery” includes:

(1) the original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land

or other property, examination, or admission, which is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature;

(2) any digest, analysis, selection, compilation, or derivation of any item listed in paragraph (1); and

(3) any index or other manner of access to any item listed in paragraph (1).

175/3. False claims

§ 3. False claims.

(a) Liability for certain acts. Any person who:

(1) knowingly presents, or causes to be presented, to an officer or employee of the State or a member of the Guard a false or fraudulent claim for payment or approval;

(2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the State;

(3) conspires to defraud the State by getting a false or fraudulent claim allowed or paid;

(4) has possession, custody, or control of property or money used, or to be used, by the State and, intending to defraud the State or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;

(5) authorized to make or deliver a document certifying receipt of property used, or to be used, by the State and, intending to defraud the State, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(6) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the State, or a member of the Guard, who lawfully may not sell or pledge the property;

(7) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the State;

(8) knowingly takes adverse employment action against an employee for disclosing information to a government or law enforcement agency, if the employee has reasonable cause to believe that the information discloses a violation of State or federal law, rule, or regulation; or

(9) knowingly retaliates against an employee who has disclosed information in a court, an administrative hearing, before a legislative commission or committee, or in another proceeding and discloses information, if the employee has reasonable cause to believe that the information discloses a violation of State or federal law, rule, or regulation,

is liable to the State for a civil penalty of not less than $5,500 and not more than $11,000, plus 3 times the amount of damages which the State sustains because of the act of that person. A person violating this subsection (a) shall also be liable to the State for the costs of a civil action brought to recover any such penalty or damages.

(b) Knowing and knowingly defined. As used in this Section, the terms “knowing” and “knowingly” mean that a person, with respect to information:

(1) has actual knowledge of the information;

(2) acts in deliberate ignorance of the truth or falsity of the information; or

(3) acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

(c) Claim defined. As used in this Section, “claim” includes any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the State provides any portion of the money or property which is requested or demanded, or if the State will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded. A claim also includes a request or demand for money damages or injunctive relief on behalf of an employee who has suffered an adverse employment action taken in violation of paragraphs (8) or (9) of subsection (a).

(d) Exclusion. This Section does not apply to claims, records, or statements made under the Illinois Income Tax Act. [FN1]

[FN1] 35 ILCS 5/101 et seq.

175/4. Civil actions for false claims

§ 4. Civil actions for false claims.

(a) Responsibilities of the Attorney General and the Department of State Police. The Department of State Police shall diligently investigate a civil violation under Section 3, except for civil violations under Section 3 that relate to and adversely affect primarily the system of State colleges and universities, any school district,

any public community college district, any municipality, municipal corporations, units of local government, or any combination of the above under an intergovernmental agreement that includes provisions for a governing board of the agency created by the agreement. The Attorney General may bring a civil action under this Section against any person that has violated or is violating Section 3.

(b) Actions by private persons. (1) A person may bring a civil action for a violation of Section 3 for the person and for the State. The action shall be brought in the name of the State. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the State. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The State may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.

(3) The State may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this Section until 20 days after the complaint is unsealed and served upon the defendant.

(4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3), the State shall:

(A) proceed with the action, in which case the action shall be conducted by the State; or

(B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

(5) When a person brings an action under this subsection (b), no person other than the State may intervene or bring a related action based on the facts underlying the pending action.

(c) Rights of the parties to Qui Tam actions. (1) If the State proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2).

(2)(A) The State may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the State of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

(B) The State may settle the action with the defendant notwithstanding the objections of the person initiating

the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(C) Upon a showing by the State that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the State's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as:

(i) limiting the number of witnesses the person may call:

(ii) limiting the length of the testimony of such witnesses;

(iii) limiting the person's cross-examination of witnesses; or

(iv) otherwise limiting the participation by the person in the litigation.

(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(3) If the State elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the State so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the State's expense). When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the State to intervene at a later date upon a showing of good cause.

(4) Whether or not the State proceeds with the action, upon a showing by the State that certain actions of discovery by the person initiating the action would interfere with the State's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the State has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(5) Notwithstanding subsection (b), the State may elect to pursue its claim through any alternate remedy available to the State, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this Section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this Section. For purposes of the preceding sentence, a finding or conclusion is final

if it has been finally determined on appeal to the appropriate court, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(d) Award to Qui Tam plaintiff. (1) If the State proceeds with an action brought by a person under subsection (b), such person shall, subject to the second sentence of this paragraph, receive at least 15% but not more than 25% of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or Auditor General's report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10% of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph (1) shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. The State shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred by the Attorney General, including reasonable attorneys' fees and costs, and the amount received shall be deposited in the Whistleblower Reward and Protection Fund created under this Act. All such expenses, fees, and costs shall be awarded against the defendant. When the system of State colleges and universities, any school district, any public community college district, any municipality, any municipal corporation, any unit of local government, or any combination of the above under an intergovernmental agreement has been adversely affected by a defendant, the court may award such sums as it considers appropriate to the affected entity, specifying in its order the amount to be awarded to the entity from the net proceeds that are deposited in the Whistleblower Reward and Protection Fund.

(2) If the State does not proceed with an action under this Section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25% and not more than 30% of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the State proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of Section 3 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under paragraph (1) or (2) of this subsection (d), taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the violation of Section 3, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the State to continue the action.

(4) If the State does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the

action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(e) Certain actions barred. (1) No court shall have jurisdiction over an action brought by a former or present member of the Guard under subsection (b) of this Section against a member of the Guard arising out of such person's service in the Guard.

(2)(A) No court shall have jurisdiction over an action brought under subsection (b) against a member of the General Assembly, a member of the judiciary, or an exempt official if the action is based on evidence or information known to the State when the action was brought.

(B) For purposes of this paragraph (2), “exempt official” means any of the following officials in State service: directors of departments established under the Civil Administrative Code of Illinois, [FN1] the Adjutant General, the Assistant Adjutant General, the Director of the State Emergency Services and Disaster Agency, members of the boards and commissions, and all other positions appointed by the Governor by and with the consent of the Senate.

(3) In no event may a person bring an action under subsection (b) which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the State is already a party.

(4)(A) No court shall have jurisdiction over an action under this Section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or Auditor General's report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

(B) For purposes of this paragraph (4), “original source” means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the State before filing an action under this Section which is based on the information.

(f) State not liable for certain expenses. The State is not liable for expenses which a person incurs in bringing an action under this Section.

(g) Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this Section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this Section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the seniority status such employee would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an ac-

tion in the appropriate circuit court for the relief provided in this subsection (g).

[FN1] 20 ILCS 5/1 et seq.

175/5. False claims procedure

§ 5. False claims procedure.

(a) A subpoena requiring the attendance of a witness at a trial or hearing conducted under Section 4 of this Act may be served at any place in the State.

(b) A civil action under Section 4 may not be brought:

(1) more than 6 years after the date on which the violation of Section 3 is committed, or

(2) more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the State charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed,

whichever occurs last.

(c) In any action brought under Section 4, the State shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(d) Notwithstanding any other provision of law, a final judgment rendered in favor of the State in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under subsection (a) or (b) of Section 4.

175/6. Subpoenas

§ 6. Subpoenas.

(a) In general.

(1) Issuance and service. Whenever the Attorney General has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to an investigation, the Attorney General may, before commencing a civil proceeding under this Act, issue in writing and cause to be served upon such person, a subpoena requiring such person:

(A) to produce such documentary material for inspection and copying,

(B) to answer, in writing, written interrogatories with respect to such documentary material or information,

(C) to give oral testimony concerning such documentary material or information, or

(D) to furnish any combination of such material, answers, or testimony.

The Attorney General may delegate the authority to issue subpoenas under this subsection (a) to the Department of State Police subject to conditions as the Attorney General deems appropriate. Whenever a subpoena is an express demand for any product of discovery, the Attorney General or his or her delegate shall cause to be served, in any manner authorized by this Section, a copy of such demand upon the person from whom the discovery was obtained and shall notify the person to whom such demand is issued of the date on which such copy was served.

(1.5) Where a subpoena requires the production of documentary material, the respondent shall produce the original of the documentary material, provided, however, that the Attorney General may agree that copies may be substituted for the originals. All documentary material kept or stored in electronic form, including electronic mail, shall be produced in hard copy, unless the Attorney General agrees that electronic versions may be substituted for the hard copy. The production of documentary material shall be made at the respondent's expense.

(2) Contents and deadlines. Each subpoena issued under paragraph (1):

(A) Shall state the nature of the conduct constituting an alleged violation that is under investigation and the applicable provision of law alleged to be violated.

(B) Shall identify the individual causing the subpoena to be served and to whom communications regarding the subpoena should be directed.

(C) Shall state the date, place, and time at which the person is required to appear, produce written answers to interrogatories, produce documentary material or give oral testimony. The date shall not be less than 10 days from the date of service of the subpoena. Compliance with the subpoena shall be at the Office of the Attorney General in either the Springfield or Chicago location or at other location by agreement.

(D) If the subpoena is for documentary material or interrogatories, shall describe the documents or information requested with specificity.

(E) Shall notify the person of the right to be assisted by counsel.

(F) Shall advise that the person has 20 days from the date of service or up until the return date specified in the demand, whichever date is earlier, to move, modify, or set aside the subpoena pursuant to subparagraph (j)(2)(A) of this Section.

(b) Protected material or information.

(1) In general. A subpoena issued under subsection (a) may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under:

(A) the standards applicable to subpoenas or subpoenas duces tecum issued by a court of this State to aid in a grand jury investigation; or

(B) the standards applicable to discovery requests under the Code of Civil Procedure, [FN1] to the extent that the application of such standards to any such subpoena is appropriate and consistent with the provisions and purposes of this Section.

(2) Effect on other orders, rules, and laws. Any such subpoena which is an express demand for any product of discovery supersedes any inconsistent order, rule, or provision of law (other than this Section) preventing or restraining disclosure of such product of discovery to any person. Disclosure of any product of discovery pursuant to any such subpoena does not constitute a waiver of any right or privilege which the person making such disclosure may be entitled to invoke to resist discovery of trial preparation materials.

(c) Service in general. Any subpoena issued under subsection (a) may be served by any person so authorized by the Attorney General or by any person authorized to serve process on individuals within Illinois, through any method prescribed in the Code of Civil Procedure or as otherwise set forth in this Act.

(d) Service upon legal entities and natural persons.

(1) Legal entities. Service of any subpoena issued under subsection (a) or of any petition filed under subsection (j) may be made upon a partnership, corporation, association, or other legal entity by:

(A) delivering an executed copy of such subpoena or petition to any partner, executive officer, managing agent, general agent, or registered agent of the partnership, corporation, association or entity;

(B) delivering an executed copy of such subpoena or petition to the principal office or place of business of the partnership, corporation, association, or entity; or

(C) depositing an executed copy of such subpoena or petition in the United States mails by registered or cer-

tified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity as its principal office or place of business.

(2) Natural person. Service of any such subpoena or petition may be made upon any natural person by:

(A) delivering an executed copy of such subpoena or petition to the person; or

(B) depositing an executed copy of such subpoena or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.

(e) Proof of service. A verified return by the individual serving any subpoena issued under subsection (a) or any petition filed under subsection (j) setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such subpoena.

(f) Documentary material.

(1) Sworn certificates. The production of documentary material in response to a subpoena served under this Section shall be made under a sworn certificate, in such form as the subpoena designates, by:

(A) in the case of a natural person, the person to whom the subpoena is directed, or

(B) in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person.

The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the subpoena is directed has been produced and made available to the Attorney General.

(2) Production of materials. Any person upon whom any subpoena for the production of documentary material has been served under this Section shall make such material available for inspection and copying to the Attorney General at the place designated in the subpoena, or at such other place as the Attorney General and the person thereafter may agree and prescribe in writing, or as the court may direct under subsection (j)(1). Such material shall be made so available on the return date specified in such subpoena, or on such later date as the Attorney General may prescribe in writing. Such person may, upon written agreement between the person and the Attorney General, substitute copies for originals of all or any part of such material.

(g) Interrogatories. Each interrogatory in a subpoena served under this Section shall be answered separately

and fully in writing under oath and shall be submitted under a sworn certificate, in such form as the subpoena designates by:

(1) in the case of a natural person, the person to whom the subpoena is directed, or

(2) in the case of a person other than a natural person, the person or persons responsible for answering each interrogatory.

If any interrogatory is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the subpoena and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

(h) Oral examinations.

(1) Procedures. The examination of any person pursuant to a subpoena for oral testimony served under this Section shall be taken before an officer authorized to administer oaths and affirmations by the laws of this State or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall, personally or by someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a certified copy of the transcript of the testimony in accordance with the instructions of the Attorney General. This subsection shall not preclude the taking of testimony by any means authorized by, and in a manner consistent with, the Code of Civil Procedure.

(2) Persons present. The investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney for and any other representative of the person giving the testimony, the attorney for the State, any person who may be agreed upon by the attorney for the State and the person giving the testimony, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

(3) Where testimony taken. The oral testimony of any person taken pursuant to a subpoena served under this Section shall be taken in the county within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the Attorney General and such person.

(4) Transcript of testimony. When the testimony is fully transcribed, the Attorney General or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to review and correct the transcript, in accordance with the rules applicable to deposition witnesses in civil cases. Upon payment of reasonable charges, the Attorney General shall furnish a copy of the transcript to the witness, except that the Attorney General may, for good cause, limit the witness to inspection

of the official transcript of the witness' testimony.

(5) Conduct of oral testimony.

(A) Any person compelled to appear for oral testimony under a subpoena issued under subsection (a) may be accompanied, represented, and advised by counsel, who may raise objections based on matters of privilege in accordance with the rules applicable to depositions in civil cases. If such person refuses to answer any question, a petition may be filed in circuit court under subsection (j)(1) for an order compelling such person to answer such question.

(B) If such person refuses any question on the grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with Article 106 of the Code of Criminal Procedure of 1963. [FN2]

(6) Witness fees and allowances. Any person appearing for oral testimony under a subpoena issued under subsection (a) shall be entitled to the same fees and allowances which are paid to witnesses in the circuit court.

(i) Custodians of documents, answers, and transcripts.

(1) Designation. The Attorney General or his or her delegate shall serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this Section.

(2) Except as otherwise provided in this Section, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, shall be available for examination by any individual, except as determined necessary by the Attorney General and subject to the conditions imposed by him or her for effective enforcement of the laws of this State, or as otherwise provided by court order.

(3) Conditions for return of material. If any documentary material has been produced by any person in the course of any investigation pursuant to a subpoena under this Section and:

(A) any case or proceeding before the court or grand jury arising out of such investigation, or any proceeding before any State agency involving such material, has been completed, or

(B) no case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of such investigation,

the custodian shall, upon written request of the person who produced such material, return to such person any

such material which has not passed into the control of any court, grand jury, or agency through introduction into the record of such case or proceeding.

(j) Judicial proceedings.

(1) Petition for enforcement. Whenever any person fails to comply with any subpoena issued under subsection (a), or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender such material, the Attorney General may file, in the circuit court of any county in which such person resides, is found, or transacts business, or the circuit court of the county in which an action filed pursuant to Section 4 of this Act is pending if the action relates to the subject matter of the subpoena and serve upon such person a petition for an order of such court for the enforcement of the subpoena.

(2) Petition to modify or set aside subpoena.

(A) Any person who has received a subpoena issued under subsection (a) may file, in the circuit court of any county within which such person resides, is found, or transacts business, and serve upon the Attorney General a petition for an order of the court to modify or set aside such subpoena. In the case of a petition addressed to an express demand for any product of discovery, a petition to modify or set aside such demand may be brought only in the circuit court of the county in which the proceeding in which such discovery was obtained is or was last pending. Any petition under this subparagraph (A) must be filed:

(i) within 20 days after the date of service of the subpoena, or at any time before the return date specified in the subpoena, whichever date is earlier, or

(ii) within such longer period as may be prescribed in writing by the Attorney General.

(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the subpoena to comply with the provisions of this Section or upon any constitutional or other legal right or privilege of such person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the subpoena, in whole or in part, except that the person filing the petition shall comply with any portion of the subpoena not sought to be modified or set aside.

(3) Petition to modify or set aside demand for product of discovery. In the case of any subpoena issued under subsection (a) which is an express demand for any product of discovery, the person from whom such discovery was obtained may file, in the circuit court of the county in which the proceeding in which such discovery was obtained is or was last pending, a petition for an order of such court to modify or set aside those portions of the subpoena requiring production of any such product of discovery, subject to the same terms, conditions, and limitations set forth in subparagraph (j)(2) of this Section.

(4) Jurisdiction. Whenever any petition is filed in any circuit court under this subsection (j), such court shall have jurisdiction to hear and determine the matter so presented, and to enter such orders as may be required to carry out the provisions of this Section. Any final order so entered shall be subject to appeal in the same manner as appeals of other final orders in civil matters. Any disobedience of any final order entered under this Section by any court shall be punished as a contempt of the court.

(k) Disclosure exemption. Any documentary material, answers to written interrogatories, or oral testimony provided under any subpoena issued under subsection (a) shall be exempt from disclosure under the Illinois Administrative Procedure Act. [FN3]

[FN1] 735 ILCS 5/1-101 et seq.

[FN2] 725 ILCS 5/106-1 et seq.

[FN3] 5 ILCS 100/1-1 et seq.

175/7. Procedure

§ 7. Procedure. The Code of Civil Procedure [FN1] shall apply to all proceedings under this Act, except when that Code is inconsistent with this Act.

[FN1] 735 ILCS 5/1-101 et seq.

175/8. Funds; Grants

§ 8. Funds; Grants.

(a) There is hereby created the Whistleblower Reward and Protection Fund as a special fund in the State Treasury. All proceeds of an action or settlement of a claim brought under this Act shall be deposited in the Fund.

(b) Monies in the Fund shall be allocated, subject to appropriation, as follows: One-sixth of the monies shall be paid to the Attorney General and one-sixth of the monies shall be paid to the Department of State Police for State law enforcement purposes. The remaining two-thirds of the monies in the Fund shall be used for payment of awards to Qui Tam plaintiffs, for attorneys' fees and expenses, and as otherwise specified in this Act. The Attorney General shall direct the State Treasurer to make disbursement of funds as provided in court orders setting those awards, fees, and expenses. The State Treasurer shall transfer any fund balances in excess of those required for these purposes to the General Revenue Fund.

END OF DOCUMENT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

JUL 24 2008

Allen K. Pope
Director
Indiana Medicaid Fraud Control Unit
8005 Castleway Drive
Indianapolis, Indiana 46250-1946

Dear Mr. Pope:

The Office of Inspector General (OIG) of the U.S. Department of Health and Human Services (HHS) has received your request to review the Indiana False Claims Act, Ind. Code §§ 5-11-5.5-1 through 5-11-5.5-18, under the requirements of section 6031(b) of the Deficit Reduction Act (DRA). Section 6031 of the DRA provides a financial incentive for states to enact laws that establish liability to the state for individuals and entities that submit false or fraudulent claims to the state Medicaid program. For a state to qualify for this incentive, the state law must meet certain requirements enumerated under section 6031(b) of the DRA, as determined by the Inspector General of HHS in consultation with the Department of Justice (DOJ). Based on our review of the law and consultation with DOJ, we have determined that Indiana's False Claims Act meets the requirements of section 6031(b) of the DRA.

Please note that a state that has a law in effect that OIG has determined meets the requirements of section 6031(b) of the DRA will be deemed in compliance with such requirements for so long as the law continues to meet such requirements. We would appreciate it if you would notify OIG of any amendment to the Indiana False Claims Act within 30 days after such amendment.

If you have any questions regarding this review, please contact me, or your staff may contact Susan Elter Gillin at 202-205-9426 or susan.gillin@oig.hhs.gov or Katie Arnholt at (202) 205-3203 or katie.arnholt@oig.hhs.gov.

Sincerely,

Daniel R. Levinson

Daniel R. Levinson
Inspector General

cc: Aaron Blight, CMS

West's Annotated Indiana Code Currentness
Title 5. State and Local Administration
Article 11. Accounting for Public Funds
Chapter 5.5. False Claims and Whistleblower Protection
5-11-5.5-1 Definitions

Sec. 1. The following definitions apply throughout this chapter:

(1) “Claim” means a request or demand for money or property that is made to a contractor, grantee, or other recipient if the state:

(A) provides any part of the money or property that is requested or demanded; or

(B) will reimburse the contractor, grantee, or other recipient for any part of the money or property that is requested or demanded.

(2) “Documentary material” means:

(A) the original or a copy of a book, record, report, memorandum, paper, communication, tabulation, chart, or other document;

(B) a data compilation stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret the data compilations; and

(C) a product of discovery.

(3) “Investigation” means an inquiry conducted by an investigator to ascertain whether a person is or has been engaged in a violation of this chapter.

(4) “Knowing”, “knowingly”, or “ known” means that a person, regarding information:

(A) has actual knowledge of the information;

(B) acts in deliberate ignorance of the truth or falsity of the information; or

(C) acts in reckless disregard of the truth or falsity of the information.

(5) “Person” includes a natural person, a corporation, a firm, an association, an organization, a partnership, a limited liability company, a business, or a trust.

(6) “Product of discovery” means the original or duplicate of:

(A) a deposition;

(B) an interrogatory;

(C) a document;

(D) a thing;

(E) a result of the inspection of land or other property; or

(F) an examination or admission;

that is obtained by any method of discovery in a judicial or an administrative proceeding of an adversarial nature. The term includes a digest, an analysis, a selection, a compilation, a derivation, an index, or another method of accessing an item listed in this subdivision.

(7) “State” means Indiana or any agency of state government. The term does not include a political subdivision.

5-11-5.5-2 Fraudulent actions against the state; civil penalty

Sec. 2. (a) This section does not apply to a claim, record, or statement concerning income tax (IC 6-3).

(b) A person who knowingly or intentionally:

(1) presents a false claim to the state for payment or approval;

(2) makes or uses a false record or statement to obtain payment or approval of a false claim from the state;

(3) with intent to defraud the state, delivers less money or property to the state than the amount recorded on the certificate or receipt the person receives from the state;

(4) with intent to defraud the state, authorizes issuance of a receipt without knowing that the information on the receipt is true;

(5) receives public property as a pledge of an obligation on a debt from an employee who is not lawfully authorized to sell or pledge the property;

(6) makes or uses a false record or statement to avoid an obligation to pay or transmit property to the state;

(7) conspires with another person to perform an act described in subdivisions (1) through (6); or

(8) causes or induces another person to perform an act described in subdivisions (1) through (6);

is, except as provided in subsection (c), liable to the state for a civil penalty of at least five thousand dollars ($5,000) and for up to three (3) times the amount of damages sustained by the state. In addition, a person who violates this section is liable to the state for the costs of a civil action brought to recover a penalty or damages.

(c) If the factfinder determines that the person who violated this section:

(1) furnished state officials with all information known to the person about the violation not later than thirty (30) days after the date on which the person obtained the information;

(2) fully cooperated with the investigation of the violation; and

(3) did not have knowledge of the existence of an investigation, a criminal prosecution, a civil action, or an administrative action concerning the violation at the time the person provided information to state officials;

the person is liable for a penalty of not less than two (2) times the amount of damages that the state sustained because of the violation. A person who violates this section is also liable to the state for the costs of a civil action brought to recover a penalty or damages.

5-11-5.5-3 Fraudulent actions against the state; investigation; rights of attorney general or inspector general to bring civil suit

Sec. 3. (a) The:

(1) attorney general; and

(2) inspector general;

have concurrent jurisdiction to investigate a violation of section 2 of this chapter.

(b) If the attorney general discovers a violation of section 2 of this chapter, the attorney general may bring a civil action under this chapter against a person who may be liable for the violation.

(c) If the inspector general discovers a violation of section 2 of this chapter, the inspector general shall certify this finding to the attorney general. The attorney general may bring a civil action under this chapter against a person who may be liable for the violation.

(d) If the attorney general or the inspector general is served by a person who has filed a civil action under section 4 of this chapter, the attorney general has the authority to intervene in that action as set forth in section 4 of this chapter.

(e) If the attorney general:

(1) is disqualified from investigating a possible violation of section 2 of this chapter;

(2) is disqualified from bringing a civil action concerning a possible violation of section 2 of this chapter;

(3) is disqualified from intervening in a civil action brought under section 4 of this chapter concerning a possible violation of section 2 of this chapter;

(4) elects not to bring a civil action concerning a possible violation of section 2 of this chapter; or

(5) elects not to intervene under section 4 of this chapter;

the attorney general shall certify the attorney general's disqualification or election to the inspector general.

(f) If the attorney general has certified the attorney general's disqualification or election not to bring a civil action or intervene in a case under subsection (e), the inspector general has authority to:

(1) bring a civil action concerning a possible violation of section 2 of this chapter; or

(2) intervene in a case under section 4 of this chapter.

(g) The attorney general shall certify to the inspector general the attorney general's disqualification or election under subsection (e) in a timely fashion, and in any event not later than:

(1) sixty (60) days after being served, if the attorney general has been served by a person who has filed a civil action under section 4 of this chapter; or

(2) one hundred eighty (180) days before the expiration of the statute of limitations, if the attorney general has not been served by a person who has filed a civil action under section 4 of this chapter.

(h) A civil action brought under section 4 of this chapter may be filed in:

(1) a circuit or superior court in Marion county; or

(2) a circuit or superior court in the county in which a defendant or plaintiff resides.

(i) The state is not required to file a bond under this chapter.

5-11-5.5-4 Fraudulent actions against the state; civil action brought by individual; procedure; intervention by attorney general or inspector general

Sec. 4. (a) A person may bring a civil action for a violation of section 2 of this chapter on behalf of the person and on behalf of the state. The action:

(1) must be brought in the name of the state; and

(2) may be filed in a circuit or superior court in:

(A) the county in which the person resides;

(B) the county in which a defendant resides; or

(C) Marion County.

(b) Except as provided in section 5 of this chapter, an action brought under this section may be dismissed only if:

(1) the attorney general or the inspector general, if applicable, files a written motion to dismiss explaining why dismissal is appropriate; and

(2) the court issues an order:

(A) granting the motion; and

(B) explaining the court's reasons for granting the motion.

(c) A person who brings an action under this section shall serve:

(1) a copy of the complaint; and

(2) a written disclosure that describes all relevant material evidence and information the person possesses;

on both the attorney general and the inspector general. The person shall file the complaint under seal, and the complaint shall remain under seal for at least one hundred twenty (120) days. The complaint shall not be served on the defendant until the court orders the complaint served on the defendant following the intervention or the election not to intervene of the attorney general or the inspector general. The state may elect to intervene and proceed with the action not later than one hundred twenty (120) days after it receives both the complaint and the written disclosure.

(d) For good cause shown, the attorney general or the inspector general may move the court to extend the time during which the complaint must remain under seal. A motion for extension may be supported by an affidavit or other evidence. The affidavit or other evidence may be submitted in camera.

(e) Before the expiration of the time during which the complaint is sealed, the attorney general or the inspector general may:

(1) intervene in the case and proceed with the action, in which case the attorney general or the inspector general shall conduct the action; or

(2) elect not to proceed with the action, in which case the person who initially filed the complaint may proceed with the action.

(f) The defendant in an action filed under this section is not required to answer the complaint until twenty-one (21) days after the complaint has been unsealed and served on the defendant.

(g) After a person has filed a complaint under this section, no person other than the attorney general or the inspector general may:

(1) intervene; or

(2) bring another action based on the same facts.

(h) If the person who initially filed the complaint:

(1) planned and initiated the violation of section 2 of this chapter; or

(2) has been convicted of a crime related to the person's violation of section 2 of this chapter;

upon motion of the attorney general or the inspector general, the court shall dismiss the person as a plaintiff.

5-11-5.5-5 Fraudulent actions against the state; intervention by attorney general or inspector general in civil action brought by individual

Sec. 5. (a) If the attorney general or the inspector general intervenes in an action under section 4 of this chapter, the attorney general or the inspector general is responsible for prosecuting the action and is not bound by an act of the person who initially filed the complaint. The attorney general or the inspector general may move for a change of venue to Marion County if the attorney general or the inspector general files a motion for change of venue not later than ten (10) days after the attorney general or the inspector general intervenes. Except as provided in this section, the person who initially filed the complaint may continue as a party to the action.

(b) The attorney general or the inspector general may dismiss the action after:

(1) notifying the person who initially filed the complaint; and

(2) the court has conducted a hearing at which the person who initially filed the complaint was provided the opportunity to be heard on the motion.

(c) The attorney general or the inspector general may settle the action if a court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable in light of the circumstances. Upon a showing of good cause, the court may:

(1) conduct the settlement hearing in camera; or

(2) lift all or part of the seal to facilitate the investigative process or settlement.

The court may consider an objection to the settlement brought by the person who initially filed the complaint, but is not bound by this objection.

(d) Upon a showing by the attorney general, the inspector general, or the defendant that unrestricted participation by the person who initially filed the complaint:

(1) will interfere with the prosecution of the case by the attorney general or the inspector general; or

(2) will involve the presentation of repetitious or irrelevant evidence, or evidence introduced for purposes of harassment;

the court may impose reasonable limitations on the person's participation, including a limit on the number of witnesses that the person may call, a limit to the amount and type of evidence that the person may introduce, a limit to the length of testimony that the person's witness may present, and a limit to the person's cross-examination of a witness.

(e) If the attorney general or the inspector general elects not to intervene in the action, the person who initially filed the complaint has the right to prosecute the action. Upon request, the attorney general or the inspector general shall be served with copies of all documents filed in the action and may obtain a copy of depositions and other transcripts at the state's expense.

(f) If the attorney general and the inspector general have elected not to intervene in an action in accordance with section 4 of this chapter, upon a showing of good cause, a court may permit either the attorney general or the inspector general to intervene at a later time. The attorney general may move to intervene at any time. If the attorney general has not moved to intervene, the inspector general may move to intervene by providing written notice to the attorney general of the inspector general's intent to intervene. If the attorney general does not move to intervene earlier than fifteen (15) days after receipt of the notice of intent to intervene, the inspector general may move to intervene. If the attorney general or the inspector general intervenes under this subsection, the attorney general or the inspector general is responsible for prosecuting the action as if the attorney general or the inspector general had intervened in accordance with section 4 of this chapter.

(g) If the attorney general or inspector general shows that a specific discovery action by the person who initially filed the complaint will interfere with the investigation or prosecution of a civil or criminal matter arising out of the same facts, the court may, following a hearing in camera, stay discovery for not more than sixty (60) days. After the court has granted a sixty (60) day stay, the court may extend the stay, following a hearing in camera, if it determines that the state has pursued the civil or criminal investigation with reasonable diligence and that a specific discovery action by the person who initially filed the complaint will interfere with the state's investigation or prosecution of the civil or criminal matter.

(h) A court may dismiss an action brought under this chapter to permit the attorney general or the inspector general to pursue its claim through an alternative proceeding, including an administrative proceeding or a proceeding brought in another jurisdiction. The person who initially filed the complaint has the same rights in the alternative proceedings as the person would have had in the original proceedings. A finding of fact or conclusion of law made in the alternative proceeding is binding on all parties to an action under this section once the

determination made in the alternative proceeding is final under the rules, regulations, statutes, or law governing the alternative proceeding, or if the time for seeking an appeal or review of the determination made in the alternative proceeding has elapsed.

5-11-5.5-6 Fraudulent actions against the state; entitlement of individual who brought civil action where state is successful

Sec. 6. (a) The person who initially filed the complaint is entitled to the following amounts if the state prevails in the action:

(1) Except as provided in subdivision (2), if the attorney general or the inspector general intervened in the action, the person is entitled to receive at least fifteen percent (15%) and not more than twenty-five percent (25%) of the proceeds of the action or settlement, plus reasonable attorney's fees and an amount to cover the expenses and costs of bringing the action.

(2) If the attorney general or the inspector general intervened in the action and the court finds that the evidence used to prosecute the action consisted primarily of specific information contained in:

(A) a transcript of a criminal, a civil, or an administrative hearing;

(B) a legislative, an administrative, or another public report, hearing, audit, or investigation; or

(C) a news media report;

the person is entitled to receive not more than ten percent (10%) of the proceeds of the action or settlement, plus reasonable attorney's fees and an amount to cover the expenses and costs of bringing the action.

(3) If the attorney general or the inspector general did not intervene in the action, the person is entitled to receive at least twenty-five percent (25%) and not more than thirty percent (30%) of the proceeds of the action or settlement, plus reasonable attorney's fees and an amount to cover the expenses and costs of bringing the action.

(4) If the person who initially filed the complaint:

(A) planned and initiated the violation of section 2 of this chapter; or

(B) has been convicted of a crime related to the person's violation of section 2 of this chapter;

the person is not entitled to an amount under this section.

After conducting a hearing at which the attorney general or the inspector general and the person who initially filed the complaint may be heard, the court shall determine the specific amount to be awarded under this section to the person who initially filed the complaint. The award of reasonable attorney's fees plus an amount to cover the expenses and costs of bringing the action is an additional cost assessed against the defendant and may not be paid from the proceeds of the civil action.

(b) If:

(1) the attorney general or the inspector general did not intervene in the action; and

(2) the defendant prevails;

the court may award the defendant reasonable attorney's fees plus an amount to cover the expenses and costs of defending the action, if the court finds that the action is frivolous.

(c) The state is not liable for the expenses, costs, or attorney's fees of a party to an action brought under this chapter.

5-11-5.5-7 Fraudulent actions against the state; jurisdiction for civil action brought by individual

Sec. 7. (a) This section does not apply to an action brought by:

(1) the attorney general;

(2) the inspector general;

(3) a prosecuting attorney; or

(4) a state employee in the employee's official capacity.

(b) A court does not have jurisdiction over an action brought under section 4 of this chapter that is based on information discovered by a present or former state employee in the course of the employee's employment, unless:

(1) the employee, acting in good faith, has exhausted existing internal procedures for reporting and recovering the amount owed the state; and

(2) the state has failed to act on the information reported by the employee within a reasonable amount of time.

(c) A court does not have jurisdiction over an action brought under section 4 of this chapter if the action is brought by an incarcerated offender, including an offender incarcerated in another jurisdiction.

(d) A court does not have jurisdiction over an action brought under section 4 of this chapter against the state, a state officer, a judge (as defined in IC 33-23-11-7), a justice, a member of the general assembly, a state employee, or an employee of a political subdivision, if the action is based on information known to the state at the time the action was brought.

(e) A court does not have jurisdiction over an action brought under section 4 of this chapter if the action is based upon an act that is the subject of a civil suit, a criminal prosecution, or an administrative proceeding in which the state is a party.

(f) A court does not have jurisdiction over an action brought under section 4 of this chapter if the action is based upon information contained in:

(1) a transcript of a criminal, a civil, or an administrative hearing;

(2) a legislative, an administrative, or another public report, hearing, audit, or investigation; or

(3) a news media report;

unless the person bringing the action has direct and independent knowledge of the information that is the basis of the action, and the person bringing the action has voluntarily provided this information to the state.

5-11-5.5-8 Fraudulent actions against the state; relief for employee discriminated against for objecting to or assisting in investigation of action

Sec. 8. (a) An employee who has been discharged, demoted, suspended, threatened, harassed, or otherwise discriminated against in the terms and conditions of employment by the employee's employer because the employee:

(1) objected to an act or omission described in section 2 of this chapter; or

(2) initiated, testified, assisted, or participated in an investigation, an action, or a hearing under this chapter;

is entitled to all relief necessary to make the employee whole.

(b) Relief under this section may include:

(1) reinstatement with the same seniority status the employee would have had but for the act described in subsection (a);

(2) two (2) times the amount of back pay owed the employee;

(3) interest on the back pay owed the employee; and

(4) compensation for any special damages sustained as a result of the act described in subsection (a), including costs and expenses of litigation and reasonable attorney's fees.

(c) An employee may bring an action for the relief provided in this section in any court with jurisdiction.

5-11-5.5-9 Service of process; limitations on actions; burden of proof; estoppel

Sec. 9. (a) A subpoena requiring the attendance of a witness at a trial or hearing conducted under this chapter may be served at any place in the state.

(b) A civil action under section 4 of this chapter is barred unless it is commenced:

(1) not later than six (6) years after the date on which the violation is committed; or

(2) not later than three (3) years after the date when facts material to the cause of action are discovered or reasonably should have been discovered by a state officer or employee who is responsible for addressing the false claim. However, an action is barred unless it is commenced not later than ten (10) years after the date on which the violation is committed.

(c) In a civil action brought under this chapter, the state is required to establish:

(1) the essential elements of the offense; and

(2) damages;

by a preponderance of the evidence.

(d) If a defendant has been convicted (including a plea of guilty or nolo contendere) of a crime involving fraud

or a false statement, the defendant is estopped from denying the elements of the offense in a civil action brought under section 4 of this chapter that involves the same transaction as the criminal prosecution.

5-11-5.5-10 Civil investigative demands

Sec. 10. (a) If the attorney general or the inspector general has reason to believe that a person may be in possession, custody, or control of documentary material or information relevant to an investigation involving a false claim, the attorney general or the inspector general may, before commencing a civil proceeding under this chapter, issue and serve a civil investigative demand requiring the person to do one (1) or more of the following:

(1) Produce the documentary material for inspection and copying.

(2) Answer an interrogatory in writing concerning the documentary material or information.

(3) Give oral testimony concerning the documentary material or information.

(b) If a civil investigative demand is a specific demand for a product of discovery, the official issuing the civil investigative demand shall:

(1) serve a copy of the civil investigative demand on the person from whom the discovery was obtained; and

(2) notify the person to whom the civil investigative demand is issued of the date of service.

5-11-5.5-11 Civil investigative demands; requirements

Sec. 11. (a) A civil investigative demand issued under this chapter must describe the conduct constituting a violation involving a false claim that is under investigation and the statute or rule that has been violated.

(b) If a civil investigative demand is for the production of documentary material, the civil investigative demand must:

(1) describe each class of documentary material to be produced with sufficient specificity to permit the material to be fairly identified;

(2) prescribe a return date for each class of documentary material that provides a reasonable period of time to assemble and make the material available for inspection and copying; and

(3) identify the official to whom the material must be made available.

(c) If a civil investigative demand is for answers to written interrogatories, the civil investigative demand must:

(1) set forth with specificity the written interrogatories to be answered;

(2) prescribe the date by which answers to the written interrogatories must be submitted; and

(3) identify the official to whom the answers must be submitted.

(d) If a civil investigative demand requires oral testimony, the civil investigative demand must:

(1) prescribe a date, time, and place at which oral testimony will be given;

(2) identify the official who will conduct the examination and the custodian to whom the transcript of the examination will be submitted;

(3) specifically state that attendance and testimony are necessary to the conduct of the investigation;

(4) notify the person receiving the demand that the person has the right to be accompanied by an attorney and any other representative; and

(5) describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry.

(e) A civil investigative demand that is a specific demand for a product of discovery may not be returned until at least twenty-one (21) days after a copy of the civil investigative demand has been served on the person from whom the discovery was obtained.

(f) The date prescribed for the giving of oral testimony under a civil investigative demand issued under this chapter must be a date that is not less than seven (7) days after the date on which the demand is received, unless the official issuing the demand determines that exceptional circumstances are present that require an earlier date.

(g) The official who issues a civil investigative demand may not issue more than one (1) civil investigative demand for oral testimony by the same person, unless:

(1) the person requests otherwise; or

(2) the official who issues a civil investigative demand, after conducting an investigation, notifies the person in writing that an additional civil investigative demand for oral testimony is necessary.

5-11-5.5-12 Civil investigative demands; materials protected from disclosure

Sec. 12. (a) A civil investigative demand issued under this chapter may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if the material, answers, or testimony would be protected from disclosure under the standards applicable:

(1) to a subpoena or subpoena duces tecum issued by a court to aid in a grand jury investigation; or

(2) to a discovery request under the rules of trial procedure;

to the extent that the application of these standards to a civil investigative demand is consistent with the purposes of this chapter.

(b) A civil investigative demand that is a specific demand for a product of discovery supersedes any contrary order, rule, or statutory provision, other than this section, that prevents or restricts disclosure of the product of discovery. Disclosure of a product of discovery under a specific demand does not constitute a waiver of a right or privilege that the person making the disclosure may be otherwise entitled to invoke to object to discovery of trial preparation materials.

5-11-5.5-13 Civil investigative demands; service

Sec. 13. (a) A civil investigative demand issued under this chapter may be served by an investigator or by any other person authorized to serve process.

(b) A civil investigative demand shall be served in accordance with the rules of trial procedure. A court having jurisdiction over a person not located in the state has the same authority to enforce compliance with this chapter as the court has over a person located in the state.

5-11-5.5-14 Civil investigative demands; application of trial rules

Sec. 14. (a) The production of documentary material in response to a civil investigative demand served under this chapter shall be made in accordance with Trial Rule 34.

(b) Each interrogatory in a civil investigative demand served under this chapter shall be answered in accordance with Trial Rule 33.

(c) The examination of a person under a civil investigative demand for oral testimony served under this chapter shall be conducted in accordance with Trial Rule 30.

5-11-5.5-15 Civil investigative demands; handling and availability of documentary material, answers to interrogatories, or transcripts of oral testimony

Sec. 15. (a) The official who issued the civil investigative demand is the custodian of the documentary material, answers to interrogatories, and transcripts of oral testimony received under this chapter.

(b) An investigator who receives documentary material, answers to interrogatories, or transcripts of oral testimony under this section shall transmit them to the official who issued the civil investigative demand. The official shall take physical possession of the material, answers, or transcripts and is responsible for the use made of them and for the return of documentary material.

(c) The official who issued the civil investigative demand may make copies of documentary material, answers to interrogatories, or transcripts of oral testimony as required for official use by the attorney general, the inspector general, or the state police. The material, answers, or transcripts may be used in connection with the taking of oral testimony under this chapter.

(d) Except as provided in subsection (e), documentary material, answers to interrogatories, or transcripts of oral testimony, while in the possession of the official who issued the civil investigative demand, may not be made available for examination to any person other than:

(1) the attorney general or designated personnel of the attorney general's office;

(2) the inspector general or designated personnel of the inspector general's office; or

(3) an officer of the state police who has been authorized by the official who issued the civil investigative demand.

(e) The restricted availability of documentary material, answers to interrogatories, or transcripts of oral testimony does not apply:

(1) if the person who provided:

(A) the documentary material, answers to interrogatories, or oral testimony; or

(B) a product of discovery that includes documentary material, answers to interrogatories, or oral testimony;

consents to disclosure;

(2) to the general assembly or a committee or subcommittee of the general assembly; or

(3) to a state agency that requires the information to carry out its statutory responsibility.

Documentary material, answers to interrogatories, or transcripts of oral testimony requested by a state agency may be disclosed only under a court order finding that the state agency has a substantial need for the use of the information in carrying out its statutory responsibility.

(f) While in the possession of the official who issued the civil investigative demand, documentary material, answers to interrogatories, or transcripts of oral testimony shall be made available to the person, or to the representative of the person who produced the material, answered the interrogatories, or gave oral testimony. The official who issued the civil investigative demand may impose reasonable conditions upon the examination or use of the documentary material, answers to interrogatories, or transcripts of oral testimony.

(g) The official who issued the civil investigative demand and any attorney employed in the same office as the official who issued the civil investigative demand may use the documentary material, answers to interrogatories, or transcripts of oral testimony in connection with a proceeding before a grand jury, a court, or an agency. Upon the completion of the proceeding, the attorney shall return to the official who issued the civil investigative demand any documentary material, answers to interrogatories, or transcripts of oral testimony that are not under the control of the grand jury, court, or agency.

(h) Upon written request of a person who produced documentary material in response to a civil investigative demand, the official who issued the civil investigative demand shall return any documentary material in the official's possession to the person who produced documentary material, if:

(1) a proceeding before a grand jury, a court, or an agency involving the documentary material has been completed; or

(2) a proceeding before a grand jury, a court, or an agency involving the documentary material has not been commenced within a reasonable time after the completion of the investigation.

The official who issued the civil investigative demand is not required to return documentary material that is in the custody of a grand jury, a court, or an agency.

5-11-5.5-16 Civil investigative demands; sanctions for noncompliance; protective order

Sec. 16. (a) A person who has failed to comply with a civil investigative demand is subject to sanctions under Trial Rule 37 to the same extent as a person who has failed to cooperate in discovery.

(b) A person who objects to a civil investigative demand issued under this chapter may seek a protective order in accordance with Trial Rule 26(C).

5-11-5.5-17 Civil investigative demands; confidentiality of materials

Sec. 17. Documentary material, answers to written interrogatories, or oral testimony provided in response to a civil investigative demand issued under this chapter are confidential.

5-11-5.5-18 Application of Indiana Rules of Trial Procedure

Sec. 18. Proceedings under this chapter are governed by the Indiana Rules of Trial Procedure, unless the Indiana Rules of Trial Procedure are inconsistent with this chapter.

END OF DOCUMENT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

DEC 21 2006

Mr. Robert Patten
Assistant Attorney General
Medicaid Fraud Control Unit
Office of the Attorney General
State of Massachusetts
1 Ashburton Place
Boston, Massachusetts 02108

Dear Mr. Patten:

We have received your request to review the Massachusetts False Claims Law, Mass. Gen. Laws ch. 12, § 5A under the requirements of Section 6031(b) of the Deficit Reduction Act (DRA). Section 6031 of the DRA provides a financial incentive for states to enact laws that establish liability to the state for individuals and entities that submit false or fraudulent claims to the state Medicaid program. For a state to qualify for this incentive, the state law must meet certain requirements enumerated under section 6031(b) of the DRA, as determined by the Inspector General of the Department of Health and Human Services in consultation with the Department of Justice (DOJ). Based on our review of the law and consultation with DOJ, we have determined that the Massachusetts False Claims Law meets the requirements of section 6031(b) of the DRA.

Please note that a state that has a law in effect that meets the requirements of section 6031(b) of the DRA as of January 1, 2007 will be deemed in compliance with such requirements for so long as the law continues to meet such requirements. We would appreciate it if you would notify OIG of any amendment to the Massachusetts False Claims Law within 30 days after such amendment.

If you have any questions regarding this review, please contact me, or have your staff contact Roderick Chen at 202-401-4134 or roderick.chen@oig.hhs.gov.

Sincerely,

Daniel R. Levinson

Daniel R. Levinson
Inspector General

cc: Aaron Blight, CMS

Effective: July 1, 2000

Massachusetts General Laws Annotated Currentness
Part I. Administration of the Government (Ch. 1-182)
Title II. Executive and Administrative Officers of the Commonwealth (Ch. 6-28A)
Chapter 12. Department of the Attorney General, and the District Attorneys (Refs & Annos)
§ 5A. False claims; definitions

(a) For the purposes of this section, the following words shall, unless the context clearly requires otherwise, have the following meaning:-

“Claim”, any request or demand, whether pursuant to a contract or otherwise, for money or property which is made to an officer, employee, agent or other representative of the commonwealth, political subdivision thereof or to a contractor, subcontractor, grantee, or other person if the commonwealth or any political subdivision thereof provides any portion of the money or property which is requested or demanded, or if the commonwealth or any political subdivision thereof will reimburse directly or indirectly such contractor, subcontractor, grantee, or other person for any portion of the money or property which is requested or demanded.

“False claims law”, pursuant to sections 5B to 5O, inclusive.

“False claims action”, an action filed by the office of the attorney general or a relator pursuant to this section.

“Knowing and knowingly”, possessing actual knowledge of relevant information, acting with deliberate ignorance of the truth or falsity of the information or acting in reckless disregard of the truth or falsity of the information and no proof of specific intent to defraud is required.

“Original source”, an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the attorney general, without public disclosure, before filing an action under this section which is based on such information.

“Person”, any natural person, corporation, partnership, association, trust or other business or legal entity.

“Political subdivision”, any city, town, county or other governmental entity authorized or created by state law, including public corporations and authorities.

“Relator”, an individual who brings an action under paragraph (2) of section 5C.

CREDIT(S)

Added by St.2000, c. 159, § 18.

HISTORICAL AND STATUTORY NOTES

2002 Main Volume

St.2000, c. 159, § 18, an emergency act, was approved July 28, 2000, and by § 498 made effective as of July 1, 2000.

LIBRARY REFERENCES

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Fraud31.
Westlaw Topic No. 184.
C.J.S. Franchises §§ 86 to 89.

RESEARCH REFERENCES

2009 Electronic Update

Treatises and Practice Aids

Bruner and O'Connor on Construction Law § 4:52, False Claims--State and Local Remedies.

Bruner and O'Connor on Construction Law § 19:99, Contractor's Common Law Damage Measures for Owner Breach of Contract--Fraud or Misrepresentation in Computation of Damage Claims.

Bruner and O'Connor on Construction Law § 8:76.55, Submission of False Information in Course of Payment Process: False Claims Act (FCA)--Criminalizing the Payment Process: Criminal False Claims Act--State False Claims...

9 Mass. Prac. Series § 6.5, Interest Necessary to Enable Person to be Party Plaintiff--Qui Tam Action.

31 Mass. Prac. Series § 29.8, Qui Tam Action.

37 Mass. Prac. Series § 8.7, Qui Tam Action.

49 Mass. Prac. Series § 3:25, Judicial Standards for Issuance of Order of Impoundment.

17A Mass. Prac. Series § 28.10, Other Civil Rights Statutes.

18B Mass. Prac. Series § 33.53, False Claims Law.

UNITED STATES SUPREME COURT

Municipal corporations as persons liable under the False Claims Act, qui tam actions, treble damages provision, repeals by implication, see Cook County, Ill. V. U.S. Ex Rel. Chandler, 2003, 123 S.Ct. 1239.

M.G.L.A. 12 § 5A, MA ST 12 § 5A

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END OF DOCUMENT

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Massachusetts General Laws Annotated Currentness
Part I. Administration of the Government (Ch. 1-182)
Title II. Executive and Administrative Officers of the Commonwealth (Ch. 6-28A)
Chapter 12. Department of the Attorney General, and the District Attorneys (Refs & Annos)
§ 5B. False claims; liability

Any person who:

(1) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

(2) knowingly makes, uses, or causes to be made or used, a false record or statement to obtain payment or approval of a claim by the commonwealth or any political subdivision thereof;

(3) conspires to defraud the commonwealth or any political subdivision thereof through the allowance or payment of a fraudulent claim;

(4) has possession, custody, or control of property or money used, or to be used, by the commonwealth or any political subdivision thereof and knowingly delivers, or causes to be delivered to the commonwealth, less property than the amount for which the person receives a certificate or receipt with the intent to willfully conceal the property;

(5) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the commonwealth or any political subdivision thereof and with the intent of defrauding the commonwealth or any political subdivision thereof, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(6) buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the commonwealth or any political subdivision thereof, knowing that said officer or employee may not lawfully sell or pledge the property;

(7) enters into an agreement, contract or understanding with one or more officials of the commonwealth or any political subdivision thereof knowing the information contained therein is false;

(8) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or to transmit money or property to the commonwealth or political subdivision thereof; or

(9) is a beneficiary of an inadvertent submission of a false claim to the commonwealth or political subdivision thereof, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the commonwealth or political subdivision within a reasonable time after discovery of the false claim shall be liable to the commonwealth or political subdivision for a civil penalty of not less than $5,000 and not more than $10,000 per violation, plus three times the amount of damages, including consequential damages, that the commonwealth or political subdivision sustains because of the act of that person. A person violating sections 5B to 5*O*, inclusive, shall also be liable to the commonwealth or any political subdivision for the expenses of the civil action brought to recover any such penalty or damages, including without limitation reasonable attorney's fees, reasonable expert's fees and the costs of investigation, as set forth below. Costs recoverable under said sections 5B to 5*O*, inclusive, shall also include the costs of any review or investigation undertaken by the attorney general, or by the state auditor or the inspector general in cooperation with the attorney general.

(10) Notwithstanding the provisions of paragraphs (1) to (9), inclusive, if the court finds that:

(i) the person committing the violation of said paragraphs (1) to (9) furnished an official of the office of the attorney general responsible for investigating false claims law violations with all the information known to such person about the violation within 30 days after the date on which the person first obtained the information;

(ii) such person fully cooperated with any commonwealth investigation of such violation; and

(iii) at the time such person furnished the commonwealth with the information about the violation, no civil action or administrative action had commenced under sections 5B to 5*O*, inclusive, or no criminal prosecution had commenced with respect to such violation, and such person did not have actual knowledge of the existence of an investigation into such violation, the court may reduce the assessment of damages to the amount of damages, including consequential damages, that the commonwealth or any political subdivision thereof sustains because of the act of a person.

(11) A corporation, partnership or other person is liable to the commonwealth under sections 5B to 5*O*, inclusive, for the acts of its agent where the agent acted with apparent authority, regardless of whether the agent acted, in whole or in part, to benefit the principal and regardless of whether the principal adopted or ratified the agent's claims, representation, statement or other action or conduct.

(12) Sections 5B to 5*O*, inclusive shall not apply to claims, records or statements made or presented to establish, limit, reduce, or evade liability for the payment of tax to the commonwealth, or any other governmental authority.

(13) A person who has engaged in conduct described in paragraphs (1) to (9), inclusive, prior to payment shall

only be entitled to payment from the commonwealth of the actual amount due less the excess amount falsely or fraudulently claimed.

CREDIT(S)

Added by St.2000, c. 159, § 18.

HISTORICAL AND STATUTORY NOTES

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18B Mass. Prac. Series § 33.53, False Claims Law.

NOTES OF DECISIONS

1. Generally

Pharmaceutical manufacturers caused false claims to be presented to the Commonwealth of Massachusetts, given that the manufacturers reported false prices to a publishing compendium knowing that pharmacies would present claims to Massachusetts Medicaid Program which were to be reimbursed based on a formula that utilized the inflated price wholesale acquisition cost (WAC) to determine the appropriate reimbursement amount. Massachusetts v. Mylan Laboratories, D.Mass.2008, 2008 WL 5650859. States 188

Determination that fraud claim was stated, under Massachusetts common law, against pharmaceutical manufacturers that allegedly misrepresented prices at which drugs were sold to their purchasers, in order to increase amount of payments made by Commonwealth to health care providers and pharmacies under Medicaid, precluded dismissal of claims under Massachusetts False Claims Act and Massachusetts Medicaid False Claims Act. Massachusetts v. Mylan Laboratories, D.Mass.2005, 357 F.Supp.2d 314. Fraud 68; Health 981

1.5. Construction and application

For purposes of determining whether multiple pharmaceutical manufacturers caused the Commonwealth of Massachusetts to overpay for generic prescription drugs under the Massachusetts Medicaid Program, by fraudulently inflating the wholesale acquisition cost of covered drugs, “wholesale acquisition costs” (WAC) was defined as the actual cost at which wholesalers acquired a drug. Massachusetts v. Mylan Laboratories, D.Mass.2008, 2008 WL 5650859. Health 487(5)

2. Knowledge

Pharmaceutical manufacturers who submitted only an average wholesale price (AWP) for a generic drug to publishing compendium and not a wholesale acquisition cost (WAC) did not knowingly clause submission of false claims to the Commonwealth of Massachusetts, as required for false claims actions against manufacturers; because the estimated acquisition cost (EAC) was defined in terms of WAC and not AWP, they did not know that AWP would be used as a grounds for reimbursement by Massachusetts Medicaid Program. Massachusetts v. Mylan Laboratories, D.Mass.2008, 2008 WL 5650859. States 188

Government's alleged knowledge that wholesale acquisition costs (WAC) reported by pharmaceutical manufacturers for generic drugs were false was not a defense to false claims actions against pharmaceutical manufacturers alleging manufacturers caused the Commonwealth of Massachusetts to overpay for generic prescription drugs under the Massachusetts Medicaid Program by fraudulently inflating the WAC of a covered drug. Massachusetts v. Mylan Laboratories, D.Mass.2008, 2008 WL 5650859. States 188

3. Materiality

Pharmaceutical manufacturers' false reports of wholesale acquisition costs (WAC) of generic drugs were material to the Commonwealth of Massachusetts' payment of false claims, as required for false claims actions against pharmaceutical manufacturers alleging manufacturers caused the Commonwealth of Massachusetts to overpay for generic prescription drugs under the Massachusetts Medicaid Program by fraudulently inflating the WAC of a covered drug. Massachusetts v. Mylan Laboratories, D.Mass.2008, 2008 WL 5650859. States 188

3.5. Presumptions and burden of proof

To establish liability under section 1 of the Massachusetts' False Claims Act (MFCA), the Commonwealth must prove that: (a) the defendants caused to be presented to the Commonwealth a claim for payment; (b) the claim was false or fraudulent; (c) the defendants knew that the claim was false or fraudulent; (d) the false aspect of the claim was material. Massachusetts v. Mylan Laboratories, D.Mass.2008, 2008 WL 5650859. States 188

To establish liability under section 2 of the Massachusetts' False Claims Act (MFCA), the Commonwealth must prove that: (a) the defendants made a statement to get a false or fraudulent claim paid or approved by the Commonwealth; (b) the statement made or used was false or fraudulent; (c) the defendants knew that the statement was false; (d) the false or fraudulent statement was material; (e) the defendants intended that the false statement be material to the Commonwealth's decision to pay or approve the false or fraudulent claim. Massachusetts v. Mylan Laboratories, D.Mass.2008, 2008 WL 5650859. States 188

4. Summary judgment

Genuine issues of material fact existed as to whether pharmaceutical manufacturers had knowledge of the falsity of wholesale acquisition costs (WAC) reported in publishing compendium, precluding summary judgment for government on false claims actions against pharmaceutical manufacturers alleging manufacturers caused the Commonwealth of Massachusetts to overpay for generic prescription drugs under the Massachusetts Medicaid Program by fraudulently inflating the WAC of a covered drug. Massachusetts v. Mylan Laboratories, D.Mass.2008, 2008 WL 5650859. Federal Civil Procedure 2498.4

Genuine issue of material fact existed as to whether the Commonwealth of Massachusetts reasonably relied as true on false representations made by pharmaceutical manufacturers with respect to wholesale acquisition costs (WAC) of generic drugs, precluding summary judgment for manufacturers in false claims action alleging manufacturers caused the Commonwealth of Massachusetts to overpay for generic prescription drugs under the Massachusetts Medicaid Program by fraudulently inflating the WAC of a covered drug. Massachusetts v. Mylan Laboratories, D.Mass.2008, 2008 WL 5650859. Federal Civil Procedure 2498.4

Genuine issues of material fact existed as to whether pharmaceutical manufacturer's alleged conduct in inflating wholesale acquisition costs (WAC) of generic drugs breached Massachusetts' covenant of good faith and fair dealing, precluding summary judgment for manufacturers on the Commonwealth's claim that by reporting false prices, the defendants violated the covenant of good faith and fair dealing implicit in rebate agreements. Massachusetts v. Mylan Laboratories, D.Mass.2008, 2008 WL 5650859. Federal Civil Procedure 2492

M.G.L.A. 12 § 5B, MA ST 12 § 5B

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END OF DOCUMENT

C

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Massachusetts General Laws Annotated Currentness
Part I. Administration of the Government (Ch. 1-182)
Title II. Executive and Administrative Officers of the Commonwealth (Ch. 6-28A)
Chapter 12. Department of the Attorney General, and the District Attorneys (Refs & Annos)
§ 5C. Violations under Secs. 5B to 5*O*; investigation by attorney general; relators; civil actions

(1) The attorney general shall investigate violations under sections 5B to 5*O*, inclusive, involving state funds or funds from any political subdivision. If the attorney general finds that a person has violated or is violating said sections 5B to 5*O*, inclusive, the attorney general may bring a civil action in superior court against the person.

(2) An individual, hereafter referred to as relator, may bring a civil action in superior court for a violation of said sections 5B to 5*O*, inclusive, on behalf of the relator and the commonwealth or any political subdivision thereof. The action shall be brought in the name of the commonwealth or the political subdivision thereof. The action may be dismissed only if the attorney general gives written reasons for consenting to the dismissal and the court approves the dismissal. Notwithstanding any general or special law to the contrary, it shall not be a cause for dismissal or a basis for a defense that the relator could have brought another action based on the same or similar facts under any other law or administrative proceeding.

(3) When a relator brings an action pursuant to said sections 5B to 5*O*, inclusive, a copy of the complaint and written disclosure of substantially all material evidence and information the relator possesses shall be served on the attorney general pursuant to Rule 4(d)(3) of the Massachusetts Rules of Civil Procedure. The complaint shall be filed under seal and shall remain so for 120 days. Notwithstanding any other general or special law or procedural rule to the contrary, service on the defendant shall not be required until the period provided in paragraph (5). The attorney general may, for good cause shown, ask the court for extensions of no more than 90 days during which the complaint shall remain under seal. Any such motions may be supported by affidavits or other submissions under seal. The court shall not grant more than two requests for extensions unless the attorney general can demonstrate extraordinary circumstances requiring a further extension. The attorney general may elect to intervene and proceed with the action on behalf of the commonwealth or political subdivision within the 120 day period or during any extension, after he receives both the complaint and the material evidence and information. Any information or documents furnished by the relator to the attorney general in connection with an action or investigation under said sections 5B to 5*O*, inclusive, shall be exempt from disclosure under section 10 of chapter 66.

(4) Before the expiration of the initial 120 day period or any 90 day extensions obtained under paragraph (3), the attorney general shall; (i) assume control of the action, in which case the action shall be conducted by the attorney general; or (ii) notify the court that he declines to take over the action, in which case the relator shall have

the right to conduct the action.

(5) If the attorney general decides to proceed with the action, the complaint shall be unsealed and served promptly thereafter. The defendant shall not be required to respond to any complaint filed under said sections 5B to 5*O*, inclusive, until 20 days after the complaint is unsealed and served upon the defendant pursuant to rule 4 of the Massachusetts rules of civil procedure.

(6) When a relator brings an action pursuant to this section, no person other than the attorney general may intervene or bring a related action based on the facts underlying the pending action.

CREDIT(S)

Added by St.2000, c. 159, § 18.

HISTORICAL AND STATUTORY NOTES

2002 Main Volume

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17A Mass. Prac. Series § 28.10, Other Civil Rights Statutes.

18B Mass. Prac. Series § 33.53, False Claims Law.

NOTES OF DECISIONS

Payment to relator 1

1. Payment to relator

Failure by employee of mutual fund sponsor to file a qui tam action as relator, on behalf of the Commonwealth or its subdivisions, against mutual fund sponsor precluded employee from receiving a bounty under Massachusetts False Claims Act (MFCA) for his role in uncovering fraudulent practices by mutual fund sponsor, i.e., market-timing trading. Scannell v. Attorney General (2007) 872 N.E.2d 1136, 70 Mass.App.Ct. 46. States 188

Employee of mutual fund sponsor failed to allege a cognizable detriment, as element of unjust enrichment, in action against Attorney General and Commonwealth, seeking recovery of bounty under Massachusetts False Claims Act (MFCA) for his role in uncovering fraudulent practices by mutual fund sponsor, i.e., market-timing trading, where employee never attained relator status, as would be required to recover a bounty under MFCA. Scannell v. Attorney General (2007) 872 N.E.2d 1136, 70 Mass.App.Ct. 46. Implied And Constructive Contracts 71

M.G.L.A. 12 § 5C, MA ST 12 § 5C

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Massachusetts General Laws Annotated Currentness
Part I. Administration of the Government (Ch. 1-182)
Title II. Executive and Administrative Officers of the Commonwealth (Ch. 6-28A)
Chapter 12. Department of the Attorney General, and the District Attorneys (Refs & Annos)
§ 5D. Prosecution by attorney general; relator's right to continue as party to action

(1) If the attorney general proceeds with the action, he shall have primary responsibility for prosecuting the action, and shall not be bound by any act of the relator. The relator shall have the right to continue as a party to the action, subject to the limitations in sections 5B to 5O, inclusive.

(2) The attorney general may dismiss the action notwithstanding the objections of the relator if the relator has been notified by the attorney general of the filing of the motion and the court has provided the relator with an opportunity for a hearing on the motion. Upon a showing of good cause, such hearing may be held in camera.

(3) The attorney general may settle the action with the defendant notwithstanding the objections of the relator if the court determines, after a hearing, that the proposed settlement is fair, adequate and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(4) Upon a showing by the attorney general that unrestricted participation during the course of the litigation by the relator initiating the action would interfere with or unduly delay the attorney general's prosecution of the case, or would be repetitious, irrelevant or for purposes of harassment, the court may, in its discretion, impose limitations on the relator's participation, including but not limited to: (i) limiting the number of witnesses the relator may call; (ii) limiting the length of the testimony of such witnesses; (iii) limiting the relator's cross examination of witnesses; or (iv) otherwise limiting the participation by the relator in the litigation.

(5) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the relator would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the relator in the litigation.

(6) If the attorney general elects not to proceed with the action, the relator who initiated the action shall have the right to conduct the action. If the attorney general so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts at the attorney general's expense. When a relator proceeds with the action, the court, without limiting the status and rights of the relator initiating the action, may nevertheless permit the attorney general to intervene at a later date upon a showing of good cause.

(7) Whether or not the attorney general proceeds with the action, upon a showing by the attorney general that certain acts of discovery by the relator initiating the action would interfere with the attorney general's investigation or prosecution of a criminal or civil matter arising out of the same or similar facts, the court may stay such discovery for a period of not more than 60 days. Such showing by the attorney general shall be conducted in camera. The court may extend the 60 day period upon a further showing in camera that the attorney general has pursued the criminal or civil investigation or proceedings with reasonable diligence and may stay any proposed discovery in the civil action that will interfere with the ongoing criminal or civil investigations or proceedings.

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Treatises and Practice Aids

18B Mass. Prac. Series § 33.53, False Claims Law.

M.G.L.A. 12 § 5D, MA ST 12 § 5D

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Title II. Executive and Administrative Officers of the Commonwealth (Ch. 6-28A)
Chapter 12. Department of the Attorney General, and the District Attorneys (Refs & Annos)
§ 5E. Alternate remedies available to determine civil penalty

Notwithstanding the provisions of section 5C, the attorney general may elect to pursue its claim through any alternate remedy available to the attorney general, including any administrative proceeding, to determine a civil penalty. If any such alternate remedy is pursued in another proceeding, a relator shall have the same rights in such proceeding as said relator would have had if the action had continued under said section 5C. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under sections 5B to 5O, inclusive. For purposes of this section, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the commonwealth, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

CREDIT(S)

Added by St.2000, c. 159, § 18.

HISTORICAL AND STATUTORY NOTES

2002 Main Volume

St.2000, c. 159, § 18, an emergency act, was approved July 28, 2000, and by § 498 made effective as of July 1, 2000.

LIBRARY REFERENCES

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Fraud31.
Westlaw Topic No. 184.
C.J.S. Franchises §§ 86 to 89.

RESEARCH REFERENCES

2009 Electronic Update

Treatises and Practice Aids

18B Mass. Prac. Series § 33.53, False Claims Law.

M.G.L.A. 12 § 5E, MA ST 12 § 5E

Current through Chapter 202 of the 2009 1st Annual Sess.

END OF DOCUMENT

Effective: July 1, 2000

Massachusetts General Laws Annotated Currentness
Part I. Administration of the Government (Ch. 1-182)
Title II. Executive and Administrative Officers of the Commonwealth (Ch. 6-28A)
Chapter 12. Department of the Attorney General, and the District Attorneys (Refs & Annos)
§ 5F. Payments to relators; limitations

(1) If the attorney general proceeds with an action brought by a relator pursuant to section 5C, the relator shall receive at least 15 per cent but not more than 25 per cent of the proceeds recovered and collected in the action or in settlement of the claim depending upon the extent to which the relator substantially contributed to the prosecution of the action.

(2) Where the action is one which the court finds to be based primarily on disclosures of specific information, other than information provided by the relator, relating to allegations or transactions in a criminal, civil, or administrative hearing; in a legislative, administrative, auditor or inspector general hearing, audit, or investigation; or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 per cent of the proceeds, taking into account the significance of the information and the role of the relator bringing the action in advancing the case to litigation.

(3) Any payment to a relator pursuant to this section shall be made only from the proceeds recovered and collected in the action or in settlement of the claim. Any such relator shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, including reasonable attorney's fees and costs. All such expenses, shall be awarded against the defendant.

(4) If the attorney general does not proceed with an action pursuant to section 5C, the relator bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages on behalf of the commonwealth or any political subdivision thereof. The amount shall be not less than 25 per cent nor more than 30 per cent of the proceeds recovered and collected in the action or settlement of the claim, and shall be paid out of such proceeds. The relator shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, including reasonable attorney's fees and costs. All such expenses shall be awarded against the defendant.

(5) Whether or not the attorney general proceeds with the action, if the court finds that the action was brought by a relator who planned, initiated or knowingly participated in the violation of sections 5B to 5O, inclusive, then the court may, to the extent the court considers appropriate, reduce or eliminate the share of the proceeds of the action which the relator would otherwise receive pursuant to paragraphs (1) to (4), inclusive, taking into account

the role of the relator in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the relator bringing the action is convicted of criminal conduct arising from his role in the violation of this section, the relator shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the attorney general to continue the action.

CREDIT(S)

Added by St.2000, c. 159, § 18.

HISTORICAL AND STATUTORY NOTES

2002 Main Volume

St.2000, c. 159, § 18, an emergency act, was approved July 28, 2000, and by § 498 made effective as of July 1, 2000.

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Westlaw Topic No. 184.
C.J.S. Franchises §§ 86 to 89.

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9 Mass. Prac. Series § 6.5, Interest Necessary to Enable Person to be Party Plaintiff--Qui Tam Action.

31 Mass. Prac. Series § 29.8, Qui Tam Action.

37 Mass. Prac. Series § 8.7, Qui Tam Action.

17A Mass. Prac. Series § 28.10, Other Civil Rights Statutes.

18B Mass. Prac. Series § 33.53, False Claims Law.

NOTES OF DECISIONS

In general 1

1. In general

Employee of mutual fund sponsor failed to allege a cognizable detriment, as element of unjust enrichment, in action against Attorney General and Commonwealth, seeking recovery of bounty under Massachusetts False Claims Act (MFCA) for his role in uncovering fraudulent practices by mutual fund sponsor, i.e., market-timing trading, where employee never attained relator status, as would be required to recover a bounty under MFCA. Scannell v. Attorney General (2007) 872 N.E.2d 1136, 70 Mass.App.Ct. 46. Implied And Constructive Contracts 71

Failure by employee of mutual fund sponsor to file a qui tam action as relator, on behalf of the Commonwealth or its subdivisions, against mutual fund sponsor precluded employee from receiving a bounty under Massachusetts False Claims Act (MFCA) for his role in uncovering fraudulent practices by mutual fund sponsor, i.e., market-timing trading. Scannell v. Attorney General (2007) 872 N.E.2d 1136, 70 Mass.App.Ct. 46. States 188

M.G.L.A. 12 § 5F, MA ST 12 § 5F

Current through Chapter 202 of the 2009 1st Annual Sess.

END OF DOCUMENT

Effective: July 1, 2000

Massachusetts General Laws Annotated Currentness
Part I. Administration of the Government (Ch. 1-182)
Title II. Executive and Administrative Officers of the Commonwealth (Ch. 6-28A)
Chapter 12. Department of the Attorney General, and the District Attorneys (Refs & Annos)

§ 5G. Actions brought against governor, lieutenant governor, attorney general, treasurer, secretary of state, etc.; limitations

(1) No court shall have jurisdiction over an action brought pursuant to section 5C against the governor, lieutenant governor, the attorney general, the treasurer, secretary of state, the auditor, a member of the general court, the inspector general or a member of the judiciary, if the action is based on evidence or information known to the commonwealth when the action was brought.

(2) An individual may not bring an action pursuant to paragraph (2) of said section 5C that is based upon allegations or transactions which are the subject of a civil suit or an administrative proceeding in which the commonwealth or any political subdivision thereof is already a party.

(3) No court shall have jurisdiction over an action pursuant to sections 5B to 5*O*, inclusive, based upon the public disclosure of allegations or transactions in a criminal, civil or administrative hearing; in a legislative, administrative, auditor's or inspector general's report, hearing, audit or investigation; or from the news media, unless the action is brought by the attorney general, or the relator is an original source of the information. No court shall have jurisdiction over an action pursuant to said sections 5B to 5*O*, inclusive, brought by a person who knew or had reason to know that the attorney general, the state auditor or the inspector general already had knowledge of the situation.

(4) An individual who is or was employed by the commonwealth or any political subdivision thereof as an auditor, investigator, attorney, financial officer, or contracting officer who otherwise performed such functions for the commonwealth or who discovered or learned of the allegations or the underlying facts from such persons, may not bring an action pursuant paragraph (2) of section 5C that is based upon allegations or transactions that the relator discovered or learned of in such capacity. For the purposes of this paragraph, the term “in such capacity” shall refer to any matter within the scope of such person's duties or job description.

CREDIT(S)

Added by St.2000, c. 159, § 18.

HISTORICAL AND STATUTORY NOTES

2002 Main Volume

St.2000, c. 159, § 18, an emergency act, was approved July 28, 2000, and by § 498 made effective as of July 1, 2000.

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C.J.S. Franchises §§ 86 to 89.

M.G.L.A. 12 § 5G, MA ST 12 § 5G

Current through Chapter 202 of the 2009 1st Annual Sess.

END OF DOCUMENT

C

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Massachusetts General Laws Annotated Currentness
Part I. Administration of the Government (Ch. 1-182)
Title II. Executive and Administrative Officers of the Commonwealth (Ch. 6-28A)
Chapter 12. Department of the Attorney General, and the District Attorneys (Refs & Annos)
§ 5H. Money recovered by commonwealth; false claims prosecution fund

(1) All money recovered by the commonwealth, as a result of actions brought by the attorney general or a person pursuant to sections 5B to 5*O*, inclusive, other than costs and attorney's fees awarded pursuant to paragraph (2), shall be credited by the state treasurer to the False Claims Prosecution Fund, established by section 2YY of chapter 29.

(2) Costs and attorney's fees awarded to a relator by final judicial order in an action under this section shall be paid directly by the defendant to the relator.

CREDIT(S)

Added by St.2000, c. 159, § 18.

HISTORICAL AND STATUTORY NOTES

2002 Main Volume

St.2000, c. 159, § 18, an emergency act, was approved July 28, 2000, and by § 498 made effective as of July 1, 2000.

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31 Mass. Prac. Series § 29.8, Qui Tam Action.

37 Mass. Prac. Series § 8.7, Qui Tam Action.

M.G.L.A. 12 § 5H, MA ST 12 § 5H

Current through Chapter 202 of the 2009 1st Annual Sess.

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Massachusetts General Laws Annotated Currentness
Part I. Administration of the Government (Ch. 1-182)
Title II. Executive and Administrative Officers of the Commonwealth (Ch. 6-28A)
Chapter 12. Department of the Attorney General, and the District Attorneys (Refs & Annos)

§ 5*I*. Awards of attorney general fees and expenses; awards of costs and attorney fees against relators; liability

(1) If the attorney general initiates an action or assumes control of an action brought by a person pursuant to sections 5B to 5*O*, inclusive, the attorney general shall be awarded his reasonable attorney's fees and expenses incurred in the litigation, including costs, if he prevails in the action. Any such award shall be deposited in the False Claims Prosecution Fund established by said section 2YY of said chapter 29.

(2) If the attorney general does not proceed with an action pursuant to sections 5B to 5*O*, inclusive, and the defendant is the prevailing party, the court may award the defendant reasonable attorneys' fees and costs against the relator upon a written finding that such action was pursued in bad faith or was wholly insubstantial, frivolous, and advanced for the purpose of causing the defendant undue burden, unnecessary expense or harassment.

(3) No liability shall be incurred by the commonwealth, the affected agency or the attorney general for any expenses, attorney's fees or other costs incurred by any person in bringing or defending an action under said sections 5B to 5*O*, inclusive.

CREDIT(S)

Added by St.2000, c. 159, § 18.

HISTORICAL AND STATUTORY NOTES

2002 Main Volume

St.2000, c. 159, § 18, an emergency act, was approved July 28, 2000, and by § 498 made effective as of July 1, 2000.

LIBRARY REFERENCES

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Westlaw Topic No. 184.
C.J.S. Franchises §§ 86 to 89.

M.G.L.A. 12 § 5I, MA ST 12 § 5I

Current through Chapter 202 of the 2009 1st Annual Sess.

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Massachusetts General Laws Annotated Currentness
Part I. Administration of the Government (Ch. 1-182)
Title II. Executive and Administrative Officers of the Commonwealth (Ch. 6-28A)
Chapter 12. Department of the Attorney General, and the District Attorneys (Refs & Annos)
§ 5J. Employers preventing employees from acting to further false claim actions; liability

(1) No employer shall make, adopt or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency or from acting to further a false claims action, including investigating, initiating, testifying, or assisting in an action filed or to be filed pursuant to said sections 5B to 5*O*, inclusive. No employer shall require as a condition of employment, during the term of employment, or at the termination of employment, that any employee agree to, accept or sign any agreement that limits or denies the employee's rights to bring an action or provide information to a government or law enforcement agency pursuant to said sections 5B to 5*O*, inclusive. Any such agreement shall be void.

(2) No employer shall discharge, demote, suspend, threaten, harass, deny promotion to, or in any other manner discriminate against an employee in the terms or conditions of employment because of lawful acts done by the employee on behalf of the employee or others in disclosing information to a government or law enforcement agency or in furthering a false claims action, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed pursuant to sections 5B to 5*O*, inclusive.

(3) Notwithstanding any general or special law to the contrary, an employer who violates paragraph (2) shall be liable for such damages or equitable relief as a court shall deem appropriate, including: reinstatement with the same seniority status such employee would have had but for the employer's violation of sections 5B to 5*O*, inclusive, two times the amount of back pay, interest on the back pay, and compensation for any special damage sustained as a result of the employer's violation of said sections 5B to 5*O*, inclusive. In addition, the defendant shall be required to pay litigation costs and reasonable attorney's fees. An employee may bring an action in the appropriate superior court or the superior court of the county of Suffolk for the relief provided in this section.

(4) An employee who is discharged, demoted, suspended, harassed, denied promotion, or in any other manner discriminated against in the terms and conditions of employment by his employer because of participation in conduct which directly or indirectly resulted in a false claim being submitted to the commonwealth or a political subdivision thereof shall be entitled to the remedies pursuant to paragraph (3) only if both of the following occurred:

(i) the employee has been harassed, threatened with termination or demotion, or otherwise coerced by the em-

ployer or its management into engaging in the fraudulent activity in the first place; and

(ii) the employee voluntarily disclosed information prior to being dismissed to a government or law enforcement agency or acts in furtherance of a false claims action, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed.

CREDIT(S)

Added by St.2000, c. 159, § 18.

HISTORICAL AND STATUTORY NOTES

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9 Mass. Prac. Series § 6.5, Interest Necessary to Enable Person to be Party Plaintiff--Qui Tam Action.

31 Mass. Prac. Series § 29.8, Qui Tam Action.

37 Mass. Prac. Series § 8.7, Qui Tam Action.

M.G.L.A. 12 § 5J, MA ST 12 § 5J

Current through Chapter 202 of the 2009 1st Annual Sess.

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Massachusetts General Laws Annotated Currentness
Part I. Administration of the Government (Ch. 1-182)
Title II. Executive and Administrative Officers of the Commonwealth (Ch. 6-28A)
Chapter 12. Department of the Attorney General, and the District Attorneys (Refs & Annos)
§ 5K. Limitation of actions; final judgments in criminal proceedings

(1) A civil action pursuant to sections 5B to 5*O*, inclusive, for a violation of section 5B may not be brought (i) more than six years after the date on which the violation occurred; or (ii) more than three years after the date when facts material to the right of action are known or reasonably should have been known by the official within the office of the attorney general charged with responsibility to act in the circumstances, but in no event more than ten years after the date on which the violation is committed, whichever occurs last. A civil action pursuant to sections 5B to 5*O*, inclusive, may be brought for acts or omissions that occurred prior to the effective date of this section, subject to the limitations period set forth in this section.

(2) Notwithstanding any other law or rule of procedure or evidence, a final judgment rendered in favor of the commonwealth in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action which involves the same act, transaction or occurrence as in the criminal proceedings and which is brought under section 5B.

CREDIT(S)

Added by St.2000, c. 159, § 18.

HISTORICAL AND STATUTORY NOTES

2002 Main Volume

St.2000, c. 159, § 18, an emergency act, was approved July 28, 2000, and by § 498 made effective as of July 1, 2000.

LIBRARY REFERENCES

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Westlaw Topic No. 184.
C.J.S. Franchises §§ 86 to 89.

RESEARCH REFERENCES

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Bruner and O'Connor on Construction Law § 8:76.55, Submission of False Information in Course of Payment Process: False Claims Act (FCA)--Criminalizing the Payment Process: Criminal False Claims Act--State False Claims...

9 Mass. Prac. Series § 6.5, Interest Necessary to Enable Person to be Party Plaintiff--Qui Tam Action.

31 Mass. Prac. Series § 29.8, Qui Tam Action.

37 Mass. Prac. Series § 8.7, Qui Tam Action.

M.G.L.A. 12 § 5K, MA ST 12 § 5K

Current through Chapter 202 of the 2009 1st Annual Sess.

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Effective: July 1, 2000

Massachusetts General Laws Annotated Currentness
Part I. Administration of the Government (Ch. 1-182)
Title II. Executive and Administrative Officers of the Commonwealth (Ch. 6-28A)
Chapter 12. Department of the Attorney General, and the District Attorneys (Refs & Annos)
§ 5L. Preponderance of the evidence standard

In any action brought pursuant to sections 5B to 5*O*, inclusive, the party bringing the action shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

CREDIT(S)

Added by St.2000, c. 159, § 18.

HISTORICAL AND STATUTORY NOTES

2002 Main Volume

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C.J.S. Franchises §§ 86 to 89.

M.G.L.A. 12 § 5L, MA ST 12 § 5L

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Massachusetts General Laws Annotated Currentness
Part I. Administration of the Government (Ch. 1-182)
Title II. Executive and Administrative Officers of the Commonwealth (Ch. 6-28A)
Chapter 12. Department of the Attorney General, and the District Attorneys (Refs & Annos)
§ 5M. Rules, regulations or guidelines; attorney general

The attorney general may promulgate any rules, regulations or guidelines that, in the attorney general's judgment, are necessary and appropriate to the effective administration of this chapter.

CREDIT(S)

Added by St.2000, c. 159, § 18.

HISTORICAL AND STATUTORY NOTES

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St.2000, c. 159, § 18, an emergency act, was approved July 28, 2000, and by § 498 made effective as of July 1, 2000.

M.G.L.A. 12 § 5M, MA ST 12 § 5M

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Massachusetts General Laws Annotated Currentness
Part I. Administration of the Government (Ch. 1-182)
Title II. Executive and Administrative Officers of the Commonwealth (Ch. 6-28A)
Chapter 12. Department of the Attorney General, and the District Attorneys (Refs & Annos)
§ 5N. Civil investigative demands; attorney general

(1) Notwithstanding any general or special law, procedural rule or regulation to the contrary, the attorney general, whenever he has reason to believe that any person may be in possession, custody or control of any documentary material or information relevant to a false claims law investigation, may, before commencing a civil proceeding under sections 5B to 5*O*, inclusive, issue in writing and cause to be served upon such person, a civil investigative demand requiring such person (i) to produce such documentary material for inspection and copying; (ii) to answer written interrogatories, in writing and under oath; (iii) to give oral testimony under oath; or (iv) to furnish any combination of such material, answers or testimony.

(2) Service of any such demand may be made by (i) delivering a copy thereof to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of such person; (ii) delivering a copy thereof to the principal place of business in the commonwealth of the person to be served; or (iii) mailing by registered or certified mail a copy thereof addressed to the person to be served at the principal place of business in the commonwealth or, if said person has no place of business in the commonwealth, to his principal office or place of business.

(3) Each such demand requesting documentary material or oral testimony shall (i) state the time and place of the taking of testimony or the examination and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs; (ii) state the nature of the conduct constituting the alleged violation of a false claims law which is under investigation, and the applicable provision of law alleged to be violated; (iii) describe the class or classes of documentary material to be produced thereunder with such definiteness and certainty as to permit such material to be fairly identified; (iv) prescribe a return date within which the documentary material is to be produced; (v) identify the members of the attorney general's staff to whom such documentary material is to be made available for inspection and copying; and (vi) if such demand is for the giving of oral testimony, notify the person receiving the demand of the right to be accompanied by an attorney and any other representative, prescribe a date, time and place at which oral testimony shall be commenced, identify the assistant attorney general who shall conduct the examination and to whom the transcript of such examination shall be submitted, specify that such attendance and testimony are necessary to the conduct of the investigation, and describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry, which will be taken pursuant to the demand. Notice of the time and place of taking oral testi-

mony shall be given by the attorney general at least ten days prior to the date of such taking of testimony or examination, unless the attorney general or an assistant attorney general designated by the attorney general determines that exceptional circumstances are present which warrant such taking of testimony within a lesser period of time.

(4) The oral examination of all persons pursuant to sections 5B to 5*O*, inclusive, shall be conducted before a person duly authorized to administer oaths by the law of the commonwealth.Rule 30(e) of the Massachusetts Rules of Civil Procedure shall be applicable to oral examinations conducted pursuant to said sections 5B to 5*O*, inclusive.

(5) Any person compelled to appear for oral testimony under a civil investigative demand issued under said sections 5B to 5*O* may be accompanied, represented and advised by counsel. Counsel may advise such person, in confidence, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person may not otherwise object to or refuse to answer any question, and may not directly or through counsel otherwise interrupt the oral examination. If such person refuses to answer any question, a motion may be filed for an order compelling such person to answer such question.

(6) The production of documentary material in response to a civil investigative demand served under sections 5B to 5*O*, inclusive, shall be made under a sworn certificate, in such form as the demand designates, by (i) in the case of a natural person, the person to whom the demand is directed, or (ii) in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person. The certificate shall state that all of the documentary material required by the demand and in the possession, custody or control of the person to whom the demand is directed has been produced and made available to the members of the attorney general's staff identified in the demand.

(7) Each written interrogatory served under sections 5B to 5*O*, inclusive, shall be answered separately and fully in writing under the penalties of perjury. The person upon whom the interrogatories have been served shall serve the answers and objections, if any, upon the attorney general within 14 days after service of the interrogatories.

(8) Any documentary material or other information produced by any person pursuant to sections 5B to 5*O*, inclusive, shall not, unless otherwise ordered by a justice of the superior court for good cause shown, be disclosed to any person other than the authorized agent or representative of the attorney general and any officer or employee of the commonwealth who is working under their direct supervision with respect to the false claims law investigation, unless with the consent of the person producing the same. Such documentary material or information may be disclosed by the attorney general in court proceedings or in papers filed in court. Nothing in this section shall preclude the attorney general from disclosing information and evidence secured pursuant to sections 5B to 5*O*, inclusive, to officials of the United States, the commonwealth or any political subdivision thereof charged with responsibility for enforcement of federal, state or local laws respecting fraud or false claims upon federal, state or local governments. Prior to any such disclosure the attorney general shall obtain a written

agreement from such officials to abide by the restrictions of this section.

(9) At any time prior to the date specified in the civil investigative demand, or within 21 days after the demand has been served, whichever period is shorter, the court may, upon motion for good cause shown, extend such reporting date or modify or set aside such demand or grant a protective order in accordance with the standards set forth in Rule 26(c) of the Massachusetts Rules of Civil Procedure. The motion may be filed in the superior court of the county in which the person served resides or has his usual place of business, or in Suffolk county.

(10) Whenever any person fails to comply with any civil investigative demand issued under sections 5B to 5*O*, inclusive, the attorney general may file, in the superior court of the county in which such person resides, is found, or transacts business, a motion for the enforcement of the civil investigative demand. The Massachusetts Rules of Civil Procedure shall apply to any such motion. Any final order entered pursuant to such petition may also include the assessment of a civil penalty of not more than $5,000 for each act or instance of noncompliance.

(11) All such information and documentary materials as are obtained by the attorney general pursuant to sections 5B to 5*O*, inclusive, shall not be public records and are exempt from disclosure under section 10 of chapter 66 or any other law.

(12) For purposes of sections 5B to 5*O*, inclusive, "documentary material" shall include the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart or other document or graphic representation, or data stored in or accessible through a computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data.

(13) Nothing in sections 5B to 5*O*, inclusive, shall be construed to authorize the attorney general to compel the production of information or documents from the state auditor or from the inspector general, unless otherwise authorized by law. Nothing in this chapter shall bar the attorney general from referring matters or disclosing information or documents to the state auditor or to the inspector general for purposes or any review or investigation they may deem appropriate.

CREDIT(S)

Added by St.2000, c. 159, § 18.

HISTORICAL AND STATUTORY NOTES

2002 Main Volume

St.2000, c. 159, § 18, an emergency act, was approved July 28, 2000, and by § 498 made effective as of July 1, 2000.

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C.J.S. Attorney General §§ 7 to 15.

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M.G.L.A. 12 § 5N, MA ST 12 § 5N

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Massachusetts General Laws Annotated Currentness
Part I. Administration of the Government (Ch. 1-182)
Title II. Executive and Administrative Officers of the Commonwealth (Ch. 6-28A)
Chapter 12. Department of the Attorney General, and the District Attorneys (Refs & Annos)
§ 5*O*. Agency reporting requirements

Nothing in sections 5B to 5M, inclusive, shall be construed to relieve an agency of its reporting requirements regarding matters within that agency under chapter 647 of the acts of 1989.

CREDIT(S)

Added by St.2000, c. 159, § 18.

HISTORICAL AND STATUTORY NOTES

2002 Main Volume

St.2000, c. 159, § 18, an emergency act, was approved July 28, 2000, and by § 498 made effective as of July 1, 2000.

M.G.L.A. 12 § 5O, MA ST 12 § 5O

Current through Chapter 202 of the 2009 1st Annual Sess.

END OF DOCUMENT

DEPARTMENT OF HEALTH & HUMAN SERVICES **Office of Inspector General**

Washington, D.C. 20201

April 15, 2009

Wallace T. Hart
Division Chief, Health Care Fraud Division
Department of the Attorney General
P.O. Box 30218
Lansing, Michigan 48909

Dear Mr. Hart:

The Office of Inspector General (OIG) of the U.S. Department of Health and Human Services (HHS) has received your request to review the Michigan Medicaid False Claims Act, Mich. Comp. Laws §§ 400.601 through 400.615, under the requirements of section 6031(b) of the Deficit Reduction Act (DRA). Section 6031 of the DRA provides a financial incentive for States to enact laws that establish liability to the State for individuals and entities that submit false or fraudulent claims to the State Medicaid program. For a State to qualify for this incentive, the State law must meet certain requirements enumerated under section 6031(b) of the DRA, as determined by the Inspector General of HHS in consultation with the Department of Justice (DOJ). Based on our review of the law and consultation with DOJ, we have determined that the Michigan Medicaid False Claims Act meets the requirements of section 6031(b) of the DRA.

Any amendment to the Michigan Medicaid False Claims Act could affect OIG's determination that it meets the requirements of section 6031(b) of the DRA. Therefore, please notify OIG of any amendment to the Michigan Medicaid False Claims Act within 30 days after such amendment.

If you have any questions regarding this review, please contact me or have your staff contact Katie Arnholt at (202) 205-3203 or katie.arnholt@oig.hhs.gov.

Sincerely,

/Daniel R. Levinson/

Daniel R. Levinson
Inspector General

cc: Richard P. Billera, Centers for Medicare & Medicaid Services

THE MEDICAID FALSE CLAIM ACT (EXCERPT)
Act 72 of 1977

400.601 Short title.

Sec. 1.

This act shall be known and may be cited as “the medicaid false claim act”.

History: 1977, Act 72, Imd. Eff. July 27, 1977

400.602 Definitions.

Sec. 2.

As used in this act:

(a) "Benefit" means the receipt of money, goods, or anything of pecuniary value.

(b) "Claim" means any attempt to cause the department of community health to pay out sums of money under the social welfare act.

(c) "Deceptive" means making a claim or causing a claim to be made under the social welfare act that contains a statement of fact or that fails to reveal a fact, which statement or failure leads the department to believe the represented or suggested state of affair to be other than it actually is.

(d) "False" means wholly or partially untrue or deceptive.

(e) "Health facility or agency" means a health facility or agency, as defined in section 20106 of the public health code, 1978 PA 368, MCL 333.20106.

(f) "Knowing" and "knowingly" means that a person is in possession of facts under which he or she is aware or should be aware of the nature of his or her conduct and that his or her conduct is substantially certain to cause the payment of a medicaid benefit. Knowing or knowingly includes acting in deliberate ignorance of the truth or falsity of facts or acting in reckless disregard of the truth or falsity of facts. Proof of specific intent to defraud is not required.

(g) "Medicaid benefit" means a benefit paid or payable under a program for medical assistance for the medically indigent in accordance with the social welfare act.

(h) "Person" means an individual, corporation, association, partnership, or other legal entity.

(i) "Social welfare act" means the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b.

History: 1977, Act 72, Imd. Eff. July 27, 1977 ;-- Am. 1984, Act 333, Imd. Eff. Dec. 26, 1984 ;-- Am. 2008, Act 421, Imd. Eff. Jan. 6, 2009

400.603 Application for, or determining rights to, medicaid benefits; false statement or false representation of material facts; concealing or failing to disclose certain events; felony; penalty.

Sec. 3.

(1) A person shall not knowingly make or cause to be made a false statement or false representation of a material fact in an application for medicaid benefits.

(2) A person shall not knowingly make or cause to be made a false statement or false representation of a material fact for use in determining rights to a medicaid benefit.

(3) A person, who having knowledge of the occurrence of an event affecting his initial or continued right to receive a medicaid benefit or the initial or continued right of any other person on whose behalf he has applied for or is receiving a benefit, shall not conceal or fail to disclose that event with intent to obtain a benefit to which the person or any other person is not entitled or in an amount greater than that to which the person or any other person is entitled.

(4) A person who violates this section is guilty of a felony, punishable by imprisonment of not more than 4 years, or a fine of not more than $50,000.00, or both.

History: 1977, Act 72, Imd. Eff. July 27, 1977

400.604 Furnishing of goods or services; kickbacks or bribes; payments or rebates for referrals; felony; penalty.

Sec. 4.

A person who solicits, offers, or receives a kickback or bribe in connection with the furnishing of goods or services for which payment is or may be made in whole or in part pursuant to a program established under Act No. 280 of the Public Acts of 1939, as amended, who makes or receives the payment, or who receives a rebate of a fee or charge for referring an individual to another person for the furnishing of the goods and services is guilty of a felony, punishable by imprisonment for not more than 4 years, or by a fine of not more than $30,000.00, or both.

History: 1977, Act 72, Imd. Eff. July 27, 1977

400.605 Conditions or operation of institution or facility; false statement or false representation of material fact to qualify for certification or recertification; felony; penalty.

Sec. 5.

(1) A person shall not knowingly and wilfully make, or induce or seek to induce the making of, a false statement or false representation of a material fact with respect to the conditions or operation of an institution or facility in order that the institution or facility may qualify, upon initial certification or upon recertification, as a hospital, skilled nursing facility, intermediate care facility, or home health agency.

(2) A person who violates this section is guilty of a felony, punishable by imprisonment for not more than 4 years, or by a fine of not more than $30,000.00, or both.

History: 1977, Act 72, Imd. Eff. July 27, 1977

400.606 Obtaining payment or allowance of false claim; felony; penalty.

Sec. 6.

(1) A person shall not enter into an agreement, combination, or conspiracy to defraud the state by obtaining or aiding another to obtain the payment or allowance of a false claim under the social welfare act, Act No. 280 of the Public Acts of 1939, as amended, being sections 400.1 to 400.121 of the Michigan Compiled Laws.

(2) A person who violates this section is guilty of a felony, punishable by imprisonment for not more than 10 years, or by a fine of not more than $50,000.00, or both.

History: 1977, Act 72, Imd. Eff. July 27, 1977 ;-- Am. 1984, Act 333, Imd. Eff. Dec. 26, 1984

400.607 Making or presenting false claims or false record or statement; violations as separate offenses; liability of health facility or agency; violation as felony; penalty.

Sec. 7.

(1) A person shall not make or present or cause to be made or presented to an employee or officer of this state a claim under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b, upon or against the state, knowing the claim to be false.

(2) A person shall not make or present or cause to be made or presented a claim under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b, that he or she knows falsely represents that the goods or services for which the claim is made were medically necessary in accordance with professionally accepted standards. Each claim violating this subsection is a separate offense. A health facility or agency is not liable under this subsection unless the health facility or agency, pursuant to a conspiracy, combination, or collusion with a physician or other provider, falsely represents the medical necessity of the particular goods or services for which the claim was made.

(3) A person shall not knowingly make, use, or cause to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state pertaining to a claim presented under the social welfare act.

(4) A person who violates this section is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than $50,000.00, or both.

History: 1977, Act 72, Imd. Eff. July 27, 1977 ;-- Am. 1984, Act 333, Imd. Eff. Dec. 26, 1984 ;-- Am. 2008, Act 421, Imd. Eff. Jan. 6, 2009

400.608 Prosecution; evidence; rebuttable presumptions.

Sec. 8.

(1) In a prosecution under this act, it shall not be necessary to show that the person had knowledge of similar acts having been performed in the past by a person acting on his or her behalf, nor to show that the person had actual notice that the acts by the persons acting on his or her behalf occurred to establish the fact that a false statement or representation was knowingly made.

(2) It shall be a rebuttable presumption that a person knowingly made a claim for a medicaid benefit if the person's actual, facsimile, stamped, typewritten, or similar signature is used on the form required for the making of a claim for a medicaid benefit.

(3) If a claim for a medicaid benefit is made by means of computer billing tapes or other electronic means, it shall be a rebuttable presumption that the person knowingly made the claim if the person has notified the department of social services in writing that claims for medicaid benefits will be submitted by use of computer billing tapes or other electronic means.

(4) In any civil or criminal action under this act, the official certificate of the director of social services or the director's delegate setting forth that documentary material or any compilation of documentary material is an authentic record or a compilation of the records of the medical assistance program under the social welfare act, Act No. 280 of the Public Acts of 1939, being sections 400.1 to 400.121 of the Michigan Compiled Laws, shall create a rebuttable presumption that the record or compilation is authentic.

History: 1977, Act 72, Imd. Eff. July 27, 1977 ;-- Am. 1984, Act 333, Imd. Eff. Dec. 26, 1984

400.609 Persons convicted 3 or more times for offense and subsequently convicted of another offense; penalty.

Sec. 9.

(1) A person who is convicted 3 or more times for an offense under this act and who is subsequently convicted of another offense under this act may be sentenced to imprisonment for a term of not more than 10 years. To be subject to punishment under this section, it is not necessary to establish that the person was indicted and convicted as a previous offender, but the increased punishment provided in this section shall be imposed in accordance with the procedure prescribed in section 13 of chapter 9 of Act No. 175 of the Public Acts of 1927, as amended, being section 769.13 of the Michigan Compiled Laws.

(2) Sentences imposed for a conviction of separate offenses under this act may run consecutively.

History: 1977, Act 72, Imd. Eff. July 27, 1977

400.610 Investigation by attorney general or assistant attorney general; appointment and powers of investigators; ratification of appointments; written demand; noncompliance; action to enforce demand; service; order; confidentiality.

Sec. 10.

(1) The attorney general or an assistant attorney general on behalf of the attorney general may conduct an investigation of an alleged violation of this act.

(2) For purposes of enforcing this act, the attorney general may appoint investigators who shall be peace officers and whose powers shall include, but not be limited to, the following:

(a) The power to execute and serve search warrants, arrest warrants, subpoenas, administrative warrants, and summonses issued under the authority of the state.

(b) The power to seize property pursuant to the laws of this state.

(c) Investigators appointed by the attorney general may exercise the powers provided in this subsection when working in conjunction with local law enforcement agencies or the department of state police.

(3) All appointments of attorney general investigators by the attorney general on and after January 1, 1979 as peace officers are hereby ratified.

(4) If the attorney general has reasonable cause to believe that a person has information or is in possession, custody, or control of any document or other tangible object relevant to an investigation for violation of this act, the attorney general may serve upon the person, before bringing any action, a written demand to appear and be examined under oath, and to produce the document or object for inspection and copying. The demand shall include all of the following:

(a) Be served upon the person in the manner required for service of process in this state.

(b) Describe the nature of the conduct constituting the violation under investigation.

(c) Describe the document or object with sufficient definiteness to permit it to be fairly identified.

(d) Contain a copy of any written interrogatories.

(e) Prescribe a reasonable time at which the person must appear to testify, within which to answer the written interrogatories, and within which the document or object must be produced, and advise the person that objections to or reasons for not complying with the demand may be filed with the attorney general, on or before that time.

(f) Specify a place for the taking of testimony or for production and designate the person who shall be custodian of the document or object.

(g) Contain a copy of subsection (5).

(5) If a person objects to or otherwise fails to comply with the written demand served upon him or her under subsection (4), the attorney general may file in the circuit court of the county in which the person resides or in which the person maintains a principal place of business within this state an action to enforce the demand. Notice of hearing the action and a copy of all pleadings shall be served upon the person, who may appear in opposition. If the court finds that the demand is proper, that there is reasonable cause to believe that there may have been or is presently occurring a violation of this act, and that the information sought or document or object demanded is relevant to the investigation, the court shall order the person to comply with the demand, subject to modification the court may prescribe. Upon motion by the person and for good cause shown, the court may make any further order in the proceedings that justice requires to protect the person from unreasonable annoyance, embarrassment, oppression, burden, or expense.

(6) Except as required by federal law, any procedure, testimony taken, or material produced shall be kept confidential by the attorney general before bringing an action against a person under this act for the violation under investigation, unless confidentiality is waived by the person being investigated and the person who has testified, answered interrogatories, or produced material, or disclosure is authorized by the court.

History: 1977, Act 72, Imd. Eff. July 27, 1977 ;-- Am. 1982, Act 518, Imd. Eff. Dec. 31, 1982 ;-- Am. 1984, Act 333, Imd. Eff. Dec. 26, 1984

400.611 Filing and prosecution of action; jurisdiction; service of process.

Sec. 11.

(1) An action brought by the attorney general under this act may be filed in Ingham county and may be prosecuted to final judgment in satisfaction there.

(2) A person may bring a civil action under section 10a in any county in which venue is proper. If the attorney general elects to intervene under section 10a(3) or (6) and the court grants the request, upon motion by the attorney general, the court shall transfer the action to the circuit court in Ingham county.

(3) Process issued by a court in which an action is filed may be served anywhere in the state.

History: 1977, Act 72, Imd. Eff. July 27, 1977 ;-- Am. 2005, Act 337, Imd. Eff. Jan. 3, 2006 ;-- Am. 2008, Act 421, Imd. Eff. Jan. 6, 2009

400.612 Civil penalty for receiving benefit by reason of fraud, making fraudulent statement, knowingly concealing material fact, or engaging in prohibited conduct; criminal action not required.

Sec. 12.

(1) A person who receives a benefit that the person is not entitled to receive by reason of fraud or making a fraudulent statement or knowingly concealing a material fact, or who engages in any conduct prohibited by this statute, shall forfeit and pay to the state the full amount received, and for each claim a civil penalty of not less than $5,000.00 or more than $10,000.00 plus triple the amount of damages suffered by the state as a result of the conduct by the person.

(2) A criminal action need not be brought against the person for that person to be civilly liable under this section.

History: 1977, Act 72, Imd. Eff. July 27, 1977 ;-- Am. 2008, Act 421, Imd. Eff. Jan. 6, 2009

400.613 Revocation of license of residential health care facility; petition for appointment of receiver; order; appointment, compensation, and powers and duties of receiver.

Sec. 13.

(1) As a means of protecting the health, safety, and welfare of patients in a residential health care facility, including hospitals, nursing homes, and other institutions reimbursed for resident or patient care by the medical assistance program established by Act No. 280 of the Public Acts of 1939, as amended, if the license of a residential health care facility is revoked for violation of this act, the attorney general may file a petition with the circuit court for the county of Ingham or the circuit court in the county in which the residential health care facility is located for the appointment of a receiver.

(2) The circuit court shall issue an order to show cause why a receiver should not be appointed returnable within 5 days after the filing of the petition.

(3) If the court finds that the facts warrant the granting of the petition, the court shall appoint a receiver to take charge of the residential health care facility. The court may determine fair compensation for the receiver.

(4) A receiver appointed pursuant to this section shall have the powers and duties prescribed by the court not inconsistent with section 2926 of Act No. 236 of the Public Acts of 1961, being section 600.2926 of the Michigan Compiled Laws. The receiver may correct an act prohibited by this act or required under Act No. 280 of the Public Acts of 1939, as amended.

History: 1977, Act 72, Imd. Eff. July 27, 1977

400.614 Statute of limitations.

Sec. 14.

(1) A person shall not bring a civil action under section 10a after the later of the following:

(a) More than 6 years after the date on which the violation described in section 10a was committed.

(b) More than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the state of Michigan charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation was committed.

(2) A person may bring an action under this act for conduct that occurred before the effective date of the amendatory act that added this section if the action is filed within the time limitation in subsection (1).

History: Add. 2008, Act 421, Imd. Eff. Jan. 6, 2009

400.615 Burden of proof; preponderance of evidence.

Sec. 15.

A person bringing a civil action under this act is required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

History: Add. 2008, Act 421, Imd. Eff. Jan. 6, 2008

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

AUG - 7 2007

Mr. L. Timothy Terry
Chief Deputy Attorney General
Nevada Department of Justice
100 North Carson Street
Carson City, Nevada 89701

Dear Mr. Terry:

The Office of Inspector General (OIG) of the Department of Health and Human Services (HHS) has received your request to review the Nevada False Claims Act, Nev. Rev. Stat. §§ 357.010 - 357.250, as amended by the Nev. S.B. 529 on June 13, 2007, under the requirements of section 6031(b) of the Deficit Reduction Act (DRA). Section 6031 of the DRA provides a financial incentive for states to enact laws that establish liability to the state for individuals and entities that submit false or fraudulent claims to the state Medicaid program. For a state to qualify for this incentive, the state law must meet certain requirements enumerated under section 6031(b) of the DRA, as determined by the Inspector General of HHS in consultation with the Department of Justice (DOJ). Based on our review of the law and in consultation with DOJ, we have determined that the Nevada False Claims Act meets the requirements of section 6031(b) of the DRA.

Please note that a state that has a law in effect that meets the requirements of section 6031(b) of the DRA will be deemed in compliance with such requirements for so long as the law continues to meet such requirements. We would appreciate it if you would notify OIG of any amendment to the Nevada False Claims Act within 30 days after such amendment.

If you have any questions regarding this review, please contact me, or have your staff contact Karla Hampton at 202-619-2078 or karla.hampton@oig.hhs.gov.

Sincerely,

Daniel R. Levinson

Daniel R. Levinson
Inspector General

cc: Aaron Blight, CMS

West's Nevada Revised Statutes Annotated Currentness
Title 31. Public Financial Administration
Chapter 357. Submission of False Claims to State or Local Government (Refs & Annos)
General Provisions
357.010. Definitions

As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 357.020 and 357.030 have the meanings ascribed to them in those sections.

357.020. "Claim" defined

"Claim" means a request or demand for money, property or services made to:

1. An officer, employee or agent of this state or of a political subdivision of this state; or

2. A contractor, grantee or other recipient of money from the State or a political subdivision of this state if any part of the money, property or services requested or demanded was provided by the State or political subdivision.

357.030. "Political subdivision" defined

"Political subdivision" means a county, city, assessment district or any other local government as defined in NRS 354.474.

357.040. Liability for damages and civil penalty for certain acts

1. Except as otherwise provided in NRS 357.050, a person who, with or without specific intent to defraud, does any of the following listed acts is liable to the State or a political subdivision, whichever is affected, for three times the amount of damages sustained by the State or political subdivision because of the act of that person, for the costs of a civil action brought to recover those damages and for a civil penalty of not less than $5,000 or more than $10,000 for each act:

(a) Knowingly presents or causes to be presented a false claim for payment or approval.

(b) Knowingly makes or uses, or causes to be made or used, a false record or statement to obtain payment or approval of a false claim.

(c) Conspires to defraud by obtaining allowance or payment of a false claim.

(d) Has possession, custody or control of public property or money and knowingly delivers or causes to be delivered to the State or a political subdivision less money or property than the amount for which he receives a receipt.

(e) Is authorized to prepare or deliver a receipt for money or property to be used by the State or a political subdivision and knowingly prepares or delivers a receipt that falsely represents the money or property.

(f) Knowingly buys, or receives as security for an obligation, public property from a person who is not authorized to sell or pledge the property.

(g) Knowingly makes or uses, or causes to be made or used, a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the State or a political subdivision.

(h) Is a beneficiary of an inadvertent submission of a false claim and, after discovering the falsity of the claim, fails to disclose the falsity to the State or political subdivision within a reasonable time.

2. As used in this section, a person acts “knowingly” with respect to information if he:

(a) Has knowledge of the information;

(b) Acts in deliberate ignorance of whether the information is true or false; or

(c) Acts in reckless disregard of the truth or falsity of the information.

357.050. Limitation of damages and waiver of penalty for cooperation of defendant

In a civil action pursuant to this chapter, the court may give judgment for not less than twice or more than three times the amount of damages sustained, and no civil penalty, if it finds that:

1. The person against whom the judgment is entered:

(a) Furnished all information known to him concerning the act, within 30 days after becoming aware of the information, to the Attorney General; and

(b) Fully cooperated with any investigation of the act by the State or political subdivision; and

2. At the time the information was furnished, no criminal prosecution or civil or administrative proceeding had commenced with respect to the act and the person had no knowledge of the existence of any investigation with respect to the act.

357.060. Joint and several liability

Liability pursuant to this chapter is joint and several for an act done by two or more persons.

357.070. Investigation and action by Attorney General

The Attorney General shall investigate any alleged liability pursuant to this chapter and may bring a civil action pursuant to this chapter against the person liable.

357.080. Action by private plaintiff; venue of actions

1. Except as otherwise provided in this section and NRS 357.090 and 357.100, a private plaintiff may maintain an action pursuant to this chapter on his own account and that of the State if money, property or services provided by the State are involved, or on his own account and that of a political subdivision if money, property or services provided by the political subdivision are involved, or on his own account and that of both the State and a political subdivision if both are involved. After such an action is commenced, it may be dismissed only with leave of the court, taking into account the public purposes of this chapter and the best interests of the parties.

2. If a private plaintiff brings an action pursuant to this chapter, no other person may bring another action pursuant to this chapter based on the same facts.

3. An action may not be maintained by a private plaintiff pursuant to this chapter:

(a) Against a member of the Legislature or the Judiciary, an elected officer of the Executive Department of the State Government, or a member of the governing body of a political subdivision, if the action is based upon evidence or information known to the State or political subdivision at the time the action was brought.

(b) If the action is based upon allegations or transactions that are the subject of a civil action or an administrative proceeding for a monetary penalty to which the State or political subdivision is already a party.

4. A complaint filed pursuant to this section must be placed under seal and so remain for at least 60 days or until the Attorney General has elected whether to intervene. No service may be made upon the defendant until the complaint is unsealed.

5. On the date the private plaintiff files his complaint, he shall send a copy of the complaint to the Attorney General by mail with return receipt requested. He shall send with each copy of the complaint a written disclosure of substantially all material evidence and information he possesses.

6. An action pursuant to this chapter may be brought in any judicial district in this State in which the defendant can be found, resides, transacts business or in which any of the alleged fraudulent activities occurred.

357.090. Action based on information public employee discovered during public employment prohibited in certain circumstances

No action may be maintained pursuant to NRS 357.080 that is based upon information discovered by a present or former employee of the State or a political subdivision during his employment, unless he first in good faith exhausted internal procedures for reporting and seeking recovery of the proceeds of the fraudulent activity through official channels and the State or political subdivision failed to act on the information provided for at least 6 months.

357.100. Action based upon certain public disclosures may only be brought by Attorney General or original source of information

1. No action may be maintained pursuant to this chapter that is based upon the public disclosure of allegations or transactions in a criminal, civil or administrative hearing, in an investigation, report, hearing or audit conducted by or at the request of a house of the Legislature, an auditor or the governing body of a political subdivision, or from the news media, unless the action is brought by the Attorney General or an original source of the information.

2. As used in this section, “original source” means a person:

(a) Who has direct and independent knowledge of the information on which the allegations were based;

(b) Who voluntarily provided the information to the State or political subdivision before bringing an action based on the information; and

(c) Whose information provided the basis or caused the making of the investigation, hearing, audit or report that led to the public disclosure.

357.110. Attorney General may elect to intervene in action by private plaintiff; motion to extend time for election; unsealing of complaint

1. Within 60 days after receiving a complaint and disclosure, the Attorney General may intervene and proceed

with the action or he may, for good cause shown, move the court to extend the time for his election whether to proceed. The motion may be supported by affidavits or other submissions in chambers.

2. If the Attorney General elects to intervene, the complaint must be unsealed. If the Attorney General elects not to intervene, the private plaintiff may proceed and the complaint must be unsealed.

357.120. Effect of intervention of Attorney General in action by private plaintiff; motion to dismiss; settlement

1. If the Attorney General intervenes, the private plaintiff remains a party to an action pursuant to NRS 357.080.

2. The Attorney General may move to dismiss the action for good cause. The private plaintiff must be notified of the filing of the motion and is entitled to oppose it and present evidence at the hearing.

3. Except as otherwise provided in this subsection, the Attorney General may settle the action. If the Attorney General intends to settle the action, he shall notify the private plaintiff of that fact. Upon the request of the private plaintiff, the court shall determine whether settlement of the action is consistent with the public purposes of this chapter and shall not approve the settlement of the action unless it determines that such settlement is consistent with the public purposes of this chapter.

357.130. Effect of declination of Attorney General to intervene in action by private plaintiff; authority for and effect of election by Attorney General to intervene subsequently in such action

1. If the Attorney General elects not to intervene in an action pursuant to NRS 357.080, the private plaintiff has the same rights in conducting the action as the Attorney General would have had. A copy of each pleading or other paper filed in the action, and a copy of the transcript of each deposition taken, must be mailed to the Attorney General if the Attorney General so requests and pays the cost thereof.

2. Upon timely application, the Attorney General may intervene in an action in which he has previously declined to intervene, if the interest of the State or a political subdivision in recovery of the money or property involved is not being adequately represented by the private plaintiff.

3. If the Attorney General so intervenes, the private plaintiff retains primary responsibility for conducting the action and any recovery must be apportioned as if the Attorney General had not intervened.

357.140. Response by defendant

The defendant is entitled to 30 days in which to respond after a complaint filed pursuant to NRS 357.080 is

unsealed and served upon him.

357.150. Stay of discovery by private plaintiff; extension

1. The court may stay discovery by a private plaintiff for not more than 60 days if the Attorney General shows that the proposed discovery would interfere with the investigation or prosecution of a civil or criminal matter arising out of the same facts, whether or not the Attorney General participates in the action.

2. The court may extend the stay upon a further showing that the Attorney General has pursued the civil or criminal investigation or proceeding with reasonable diligence and the proposed discovery would interfere with its continuation. Discovery may not be stayed for a total of more than 6 months over the objection of the private plaintiff, except for good cause shown by the Attorney General.

3. A showing made pursuant to this section must be made in chambers.

357.160. Court-imposed limitation upon participation of private plaintiff in action

Upon a showing by the Attorney General that unrestricted participation by a private plaintiff would interfere with or unduly delay the conduct of an action, or would be repetitious, irrelevant or solely for harassment, the court may limit his participation by, among other measures, limiting:

1. The number of witnesses he may call;

2. The length of the testimony of the witnesses; or

3. His cross-examination of witnesses.

357.170. Limitation of actions; standard of proof; effect of certain findings of guilt in criminal proceeding on action

1. An action pursuant to this chapter may not be commenced more than 3 years after the date on which the Attorney General discovers, or reasonably should have discovered, the fraudulent activity or more than 6 years after the fraudulent activity occurred, but in no event more than 10 years after the fraudulent activity occurred. Within those limits, an action may be based upon fraudulent activity that occurred before July 1, 2007.

2. In an action pursuant to this chapter, the standard of proof is a preponderance of the evidence. A finding of guilty or guilty but mentally ill in a criminal proceeding charging false statement or fraud, whether upon a verdict of guilty or guilty but mentally ill or a plea of guilty, guilty but mentally ill or nolo contendere, estops the person found guilty or guilty but mentally ill from denying an essential element of that offense in an action

pursuant to this chapter based upon the same transaction as the criminal proceeding.

357.180. Award of expenses and attorney's fees

1. If the Attorney General or a private plaintiff prevails in or settles an action pursuant to NRS 357.080, the private plaintiff is entitled to a reasonable amount for expenses that the court finds were necessarily incurred, including reasonable costs, attorney's fees and the fees of expert consultants and expert witnesses. Those expenses must be awarded against the defendant, and may not be allowed against the State or a political subdivision.

2. If the defendant prevails in the action, the court may award him reasonable expenses and attorney's fees against the party or parties who participated in the action if it finds that the action was clearly frivolous or vexatious or brought solely for harassment.

357.190. “Recovery” defined

As used in NRS 357.190 to 357.230, inclusive, “recovery” includes civil penalties and does not include any allowance of expenses or attorney's fees.

357.200. Distribution to special account in State General Fund if Attorney General initiated action

If the Attorney General initiates an action pursuant to this chapter, 33 percent of any recovery must be paid into the State General Fund to the credit of a special account, for use by the Attorney General as appropriated or authorized by the Legislature in the investigation and prosecution of false claims.

357.210. Distribution to private plaintiff in certain actions

1. If the Attorney General intervenes at the outset in an action pursuant to NRS 357.080, the private plaintiff is entitled, except as otherwise provided in NRS 357.220, to receive not less than 15 percent or more than 33 percent of any recovery, according to the extent of his contribution to the conduct of the action.

2. If the Attorney General does not intervene in the action at the outset, the private plaintiff is entitled, except as otherwise provided in NRS 357.220, to receive not less than 25 percent or more than 50 percent of any recovery, as the court determines to be reasonable.

357.220. Distribution to private plaintiff in action based upon information obtained by public employee during public employment

1. If the action is one described in NRS 357.090, the present or former employee of the State or political sub-

division is not entitled to any minimum percentage of any recovery, but the court may award him no more than 33 percent of the recovery if the Attorney General intervenes in the action at the outset, or no more than 50 percent if the Attorney General does not intervene, according to the significance of his information, the extent of his contribution to the conduct of the action and the response to his efforts to report the false claim and gain recovery through other official channels.

2. If the private plaintiff is a present or former employee of the State or a political subdivision and benefited financially from the fraudulent activity, he is not entitled to any minimum percentage of any recovery, but the court may award him no more than 33 percent of the recovery if the Attorney General intervenes in the action at the outset, or no more than 50 percent if the Attorney General does not intervene, according to the significance of his information, the extent of his contribution to the conduct of the action, the extent of his involvement in the fraudulent activity, his attempts to avoid or resist the activity and the other circumstances of the activity.

357.230. Distribution of unapportioned portion to general fund of State or political subdivision, or both

The portion of any recovery not apportioned pursuant to NRS 357.200, 357.210 and 357.220 must be paid into the State General Fund if the money, property or services were provided only by the State, or into the general fund of the political subdivision if they were provided only by a political subdivision. If the action involved both the State and a political subdivision, the court shall apportion the remaining portion of any recovery between them according to the respective values of the money, property or services provided by each.

357.240. Employer prohibited from forbidding employee from making certain disclosures or acting in furtherance of action relating to false claim and from taking any retaliatory action against employee for such disclosures or actions

1. An employer shall not adopt or enforce any rule or policy forbidding an employee to disclose information to the State, a political subdivision or a law enforcement agency or to act in furtherance of an action pursuant to this chapter, including investigation for, bringing or testifying in such an action.

2. An employer shall not discharge, demote, suspend, threaten, harass, deny promotion to or otherwise discriminate against an employee in the terms or conditions of his employment because of lawful acts done by him on his own behalf or on behalf of others in disclosing information to the State, a political subdivision or a law enforcement agency in furtherance of an action pursuant to this chapter, including investigation for, bringing or testifying in such an action.

357.250. Liability of employer for violations of NRS 357.240; entitlement of employee to remedies

1. An employer who violates subsection 2 of NRS 357.240 is liable to the affected employee in a civil action for all relief necessary to make him whole, including, without limitation, reinstatement with the same seniority as if the discrimination had not occurred or damages in lieu of reinstatement if appropriate, twice the amount

of lost compensation, interest on the lost compensation, any special damage sustained as a result of the discrimination and punitive damages if appropriate. The employer is also liable for expenses recoverable pursuant to NRS 357.180, costs and attorney's fees.

2. An employee is entitled to the remedies provided in subsection 1 only if:

(a) He voluntarily disclosed information to the State or a political subdivision or voluntarily acted in furtherance of an action pursuant to this chapter; and

(b) He was harassed, threatened with termination or demotion, or otherwise coerced by his employer into any participation in fraudulent activity.

END OF DOCUMENT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

AUG - 7 2007

The Honorable Andrew M. Cuomo
New York State Attorney General
120 Broadway
New York, NY 10271

Dear Mr. Cuomo:

The Office of Inspector General (OIG) of the Department of Health and Human Services (HHS) has received your request to review the New York False Claims Act, N.Y. State Fin. Law §§ 187 - 194, under the requirements of section 6031(b) of the Deficit Reduction Act (DRA). Section 6031 of the DRA provides a financial incentive for states to enact laws that establish liability to the state for individuals and entities that submit false or fraudulent claims to the state Medicaid program. For a state to qualify for this incentive, the state law must meet certain requirements enumerated under section 6031(b) of the DRA, as determined by the Inspector General of HHS in consultation with the Department of Justice (DOJ). Based on our review of the law and consultation with DOJ, we have determined that the New York False Claims Act meets the requirements of section 6031(b) of the DRA.

Please note that a state that has a law in effect that meets the requirements of section 6031(b) of the DRA will be deemed in compliance with such requirements for so long as the law continues to meet such requirements. We would appreciate it if you would notify OIG of any amendment to the New York False Claims Act within 30 days after such amendment.

If you have any questions regarding this review, please contact me, or have your staff contact Susan Gillin at 202-619-2078 or susan.gillin@oig.hhs.gov.

Sincerely,

Daniel R. Levinson

Daniel R. Levinson
Inspector General

cc: Aaron Blight, CMS
Robin L. Baker, Executive Deputy
Attorney General for Criminal Justice

Mckinney's Consolidated Laws of New York Annotated Currentness
State Finance Law (Refs & Annos)
Chapter 56. Of the Consolidated Laws
➡ Article XIII. New York False Claims Act (Refs & Annos)
➡ **§ 187. Short title**

This article shall be known and may be cited as the “New York false claims act”.

§ 188. Definitions

As used in this article, the following terms shall mean:

1. “Claim” means any request or demand, whether under a contract or otherwise, for money or property which is made to any employee, officer, or agent of the state or a local government, or to any contractor, grantee or other recipient, if the state or a local government provides any portion of the money or property which is requested or demanded or will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

2. “False claim” means any claim which is, either in whole or part, false or fraudulent.

3. “Knowing and knowingly” means that with respect to a claim, or information relating to a claim, a person:

(a) has actual knowledge of such claim or information;

(b) acts in deliberate ignorance of the truth or falsity of such claim or information; or

(c) acts in reckless disregard of the truth or falsity of such claim or information.

Proof of specific intent to defraud is not required, provided, however that acts occurring by mistake or as a result of mere negligence are not covered by this article.

4. “Local government” means any county, city, town, village, school district, board of cooperative educational services, local public benefit corporation or other municipal corporation or political subdivision of the state.

5. “Original source” means a person who has direct and independent knowledge of the information on which allegations are based, and has voluntarily provided the information to the state or a local government before

filing an action under this article which is based on the information.

6. “Person” means any natural person, partnership, corporation, association or any other legal entity or individual, other than the state or a local government.

7. “State” means the state of New York and any state department, board, bureau, division, commission, committee, public benefit corporation, public authority, council, office or other governmental entity performing a governmental or proprietary function for the state.

§ 189. Liability for certain acts

1. Subject to the provisions of subdivision two of this section, any person who:

(a) knowingly presents, or causes to be presented, to any employee, officer or agent of the state or a local government, a false or fraudulent claim for payment or approval;

(b) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the state or a local government;

(c) conspires to defraud the state or a local government by getting a false or fraudulent claim allowed or paid;

(d) has possession, custody, or control of property or money used, or to be used, by the state or a local government and, intending to defraud the state or a local government or willfully to conceal the property or money, delivers, or causes to be delivered, less property or money than the amount for which the person receives a certificate or receipt;

(e) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the state or a local government and, intending to defraud the state or a local government, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(f) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the state or a local government knowing that the officer or employee lawfully may not sell or pledge the property; or

(g) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state or a local government; shall be liable: (i) to the state for a civil penalty of not less than six thousand dollars and not more than twelve thousand dollars, plus three times the amount of damages which the state sustains because of the act of that person; and (ii) to any local government for three times the amount of damages sustained by such local government because of

the act of that person.

2. The court may assess not more than two times the amount of damages sustained because of the act of the person described in subdivision one of this section, if the court finds that:

(a) the person committing the violation of this section had furnished all information known to such person about the violation, to those officials responsible for investigating false claims violations on behalf of the state and any local government that sustained damages, within thirty days after the date on which such person first obtained the information;

(b) such person fully cooperated with any government investigation of such violation; and

(c) at the time such person furnished information about the violation, no criminal prosecution, civil action, or administrative action had commenced with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation.

3. A person who violates this section shall also be liable for the costs, including attorneys' fees, of a civil action brought to recover any such penalty or damages.

4. This section shall not apply to claims, records, or statements made under the tax law.

§ 190. Civil actions for false claims

1. Civil enforcement actions. The attorney general shall have the authority to investigate violations under section one hundred eighty-nine of this article. If the attorney general believes that a person has violated or is violating such section, then the attorney general may bring a civil action on behalf of the people of the state of New York or on behalf of a local government against such person. A local government also shall have the authority to investigate violations that may have resulted in damages to such local government under section one hundred eighty-nine of this article, and may bring a civil action on its own behalf to recover damages sustained by such local government as a result of such violations. No action may be filed pursuant to this subdivision against the federal government, the state or a local government, or any officer or employee thereof acting in his or her official capacity. The attorney general shall consult with the office of medicaid inspector general prior to filing any action related to the medicaid program.

2. Qui tam civil actions. (a) Any person may bring a qui tam civil action for a violation of section one hundred eighty-nine of this article on behalf of the people of the state of New York or a local government. No action may be filed pursuant to this subdivision against the federal government, the state or a local government, or any officer or employee thereof acting in his or her official capacity.

(b) A copy of the complaint and written disclosure of substantially all material evidence and information the

person possesses shall be served on the state pursuant to subdivision one of section three hundred seven of the civil practice law and rules. The complaint shall be filed in supreme court in camera, shall remain under seal for at least sixty days, and shall not be served on the defendant until the court so orders. If the allegations in the complaint allege a violation of section one hundred eighty-nine of this article involving damages to a local government, then the attorney general may at any time provide a copy of such complaint and written disclosure to the attorney for such local government; provided, however, that if the allegations in the complaint involve damages only to a city with a population of one million or more, or only to the state and such a city, then the attorney general shall provide such complaint and written disclosure to the corporation counsel of such city within thirty days. The state may elect to supersede or intervene and proceed with the action, or to authorize a local government that may have sustained damages to supersede or intervene, within sixty days after it receives both the complaint and the material evidence and information; provided, however, that if the allegations in the complaint involve damages only to a city with a population of one million or more, then the attorney general may not supersede or intervene in such action without the consent of the corporation counsel of such city. The attorney general shall consult with the office of the medicaid inspector general prior to superseding or intervening in any action related to the medicaid program. The attorney general may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under this subdivision. Any such motions may be supported by affidavits or other submissions in camera.

(c) Prior to the expiration of the sixty day period or any extensions obtained under paragraph (b) of this subdivision, the attorney general shall notify the court that he or she:

(i) intends to file a complaint against the defendant on behalf of the people of the state of New York or a local government, and thereby be substituted as the plaintiff in the action and convert the action in all respects from a qui tam civil action brought by a private person into a civil enforcement action by the attorney general under subdivision one of this section;

(ii) intends to intervene in such action, as of right, so as to aid and assist the plaintiff in the action; or

(iii) if the action involves damages sustained by a local government, intends to grant the local government permission to: (A) file and serve a complaint against the defendant, and thereby be substituted as the plaintiff in the action and convert the action in all respects from a qui tam civil action brought by a private person into a civil enforcement action by the local government under subdivision one of this section; or (B) intervene in such action, as of right, so as to aid and assist the plaintiff in the action.

The attorney general shall provide the local government with a copy of any such notification at the same time the court is notified.

(d) If the state notifies the court that it intends to file a complaint against the defendant and thereby be substituted as the plaintiff in the action, or to permit a local government to do so, such complaint must be filed within thirty days after the notification to the court.

(e) If the state notifies the court that it intends to intervene in the action, or to permit a local government to do so, then such motion for intervention shall be filed within thirty days after the notification to the court.

(f) If the state declines to participate in the action or to authorize participation by a local government, the qui tam action may proceed subject to judicial review under this section, the civil practice law and rules, and other applicable law.

3. Time to answer. If the state decides to participate in a qui tam action or to authorize the participation of a local government, the court shall order that the qui tam complaint be unsealed and served at the time of the filing of the complaint or intervention motion by the state or local government. After the complaint is unsealed, or if a complaint is filed by the state or a local government pursuant to subdivision one of this section, the defendant shall be served with the complaint and summons pursuant to article three of the civil practice law and rules. A copy of any complaint which alleges that damages were sustained by a local government shall also be served on such local government. The defendant shall be required to respond to the summons and complaint within the time allotted under rule three hundred twenty of the civil practice law and rules.

4. Related actions. When a person brings a qui tam action under this section, no person other than the attorney general, or a local government attorney acting pursuant to subdivision one of this section or paragraph (b) of subdivision two of this section, may intervene or bring a related civil action based upon the facts underlying the pending action, unless such other person has first obtained the permission of the attorney general to intervene or to bring such related action; provided, however, that nothing in this subdivision shall be deemed to deny persons the right, upon leave of court, to file briefs amicus curiae.

5. Rights of the parties of qui tam actions. (a) If the attorney general elects to convert the qui tam civil action into an attorney general enforcement action, then the state shall have the primary responsibility for prosecuting the action. If the attorney general elects to intervene in the qui tam civil action then the state and the person who commenced the action, and any local government which sustained damages and intervenes in the action, shall share primary responsibility for prosecuting the action. If the attorney general elects to permit a local government to convert the action into a civil enforcement action, then the local government shall have primary responsibility for investigating and prosecuting the action. If the action involves damages to a local government but not the state, and the local government intervenes in the qui tam civil action, then the local government and the person who commenced the action shall share primary responsibility for prosecuting the action. Under no circumstances shall the state or a local government be bound by an act of the person bringing the original action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (b) of this subdivision. Under no circumstances shall the state be bound by the act of a local government that intervenes in an action involving damages to the state. If neither the attorney general nor a local government intervenes in the qui tam action then the qui tam plaintiff shall have the responsibility for prosecuting the action, subject to the attorney general's right to intervene at a later date upon a showing of good cause.

(b)(i) The state may move to dismiss the action notwithstanding the objections of the person initiating the action if the person has been served with the motion to dismiss and the court has provided the person with an op-

portunity to be heard on the motion. If the action involves damages to both the state and a local government, then the state shall consult with such local government before moving to dismiss the action. If the action involves damages sustained by a local government but not the state, then the local government may move to dismiss the action notwithstanding the objections of the person initiating the action if the person has been served with the motion to dismiss and the court has provided the person with an opportunity to be heard on the motion.

(ii) The state or a local government may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after an opportunity to be heard, that the proposed settlement is fair, adequate, and reasonable with respect to all parties under all the circumstances. Upon a showing of good cause, such opportunity to be heard may be held in camera.

(iii) Upon a showing by the attorney general or a local government that the original plaintiff's unrestricted participation during the course of the litigation would interfere with or unduly delay the prosecution of the case, or would be repetitious or irrelevant, or upon a showing by the defendant that the original qui tam plaintiff's unrestricted participation during the course of the litigation would be for purposes of harassment or would cause the defendant undue burden, the court may, in its discretion, impose limitations on the original plaintiff's participation in the case, such as:

(A) limiting the number of witnesses the person may call;

(B) limiting the length of the testimony of such witnesses;

(C) limiting the person's cross-examination of witnesses; or

(D) otherwise limiting the participation by the person in the litigation.

(c) Notwithstanding any other provision of law, whether or not the attorney general or a local government elects to supersede or intervene in a qui tam civil action, the attorney general and such local government may elect to pursue any remedy available with respect to the criminal or civil prosecution of the presentation of false claims, including any administrative proceeding to determine a civil money penalty or to refer the matter to the office of the medicaid inspector general for medicaid related matters. If any such alternate civil remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section.

(d) Notwithstanding any other provision of law, whether or not the attorney general elects to supersede or intervene in a qui tam civil action, or to permit a local government to supersede or intervene in the qui tam civil action, upon a showing by the state or local government that certain actions of discovery by the person initiating the action would interfere with the state's or a local government's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than sixty days. Such a showing shall be conducted in camera. The court may extend the period of such stay upon a

further showing in camera that the state or a local government has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

6. Awards to qui tam plaintiff. (a) If the attorney general elects to convert the qui tam civil action into an attorney general enforcement action, or to permit a local government to convert the action into a civil enforcement action by such local government, or if the attorney general or a local government elects to intervene in the qui tam civil action, then the person or persons who initiated the qui tam civil action collectively shall be entitled to receive between fifteen and twenty-five percent of the proceeds recovered in the action or in settlement of the action. The court shall determine the percentage of the proceeds to which a person commencing a qui tam civil action is entitled, by considering the extent to which the plaintiff substantially contributed to the prosecution of the action. Where the court finds that the action was based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions in a criminal, civil or administrative hearing, in a legislative or administrative report, hearing, audit or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than ten percent of the proceeds, taking into account the significance of the information and the role of the person or persons bringing the action in advancing the case to litigation.

(b) If the attorney general or a local government does not elect to intervene or convert the action, and the action is successful, then the person or persons who initiated the qui tam action which obtains proceeds shall be entitled to receive between twenty-five and thirty percent of the proceeds recovered in the action or settlement of the action. The court shall determine the percentage of the proceeds to which a person commencing a qui tam civil action is entitled, by considering the extent to which the plaintiff substantially contributed to the prosecution of the action.

(c) With the exception of a court award of costs, expenses or attorneys' fees, any payment to a person pursuant to this paragraph shall be made from the proceeds.

7. Costs, expenses, disbursements and attorneys' fees. In any action brought pursuant to this article, the court may award the attorney general, on behalf of the people of the state of New York, and any local government that participates as a party in the action, and any person who is a qui tam plaintiff, an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees, plus costs pursuant to article eighty-one of the civil practice law and rules. All such expenses, fees and costs shall be awarded directly against the defendant and shall not be charged from the proceeds, but shall only be awarded if the state or a local government or the qui tam civil action plaintiff prevails in the action.

8. Exclusion from recovery. If the court finds that the qui tam civil action was brought by a person who planned or initiated the violation of section one hundred eighty-nine of this article upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise be entitled to receive under subdivision six of this section, taking into account the role of such person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the qui tam civil action is convicted of criminal conduct arising

from his or her role in the violation of section one hundred eighty-nine of this article, that person shall be dismissed from the qui tam civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the attorney general to supersede or intervene in such action and to civilly prosecute the same on behalf of the state or a local government.

9. Certain actions barred. No court shall have jurisdiction over a qui tam civil action brought pursuant to subdivision two of this section:

(a) based on allegations or transactions which are the subject of a pending civil action or an administrative action in which the state or a local government is already a party;

(b) derived from public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a legislative or administrative report, hearing, audit or investigation, or from the news media, unless the person who initiated the action is an original source of the information;

(c) if the agency has reached a binding settlement or other agreement with the person who submitted such false claims resolving the matter and such agreement has been approved in writing by the attorney general, or by the local government attorney if the matter involves allegations of false claims submitted to a local government; or

(d) against a member of the legislature, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the state when the action was brought.

10. Liability. Neither the state nor any local government shall be liable for any expenses which any person incurs in bringing a qui tam civil action under this article.

§ 191. Remedies of employees

1. Any employee of any private or public employer who is discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employer or others in furtherance of an action brought under this article, including the investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include but not be limited to:

(a) an injunction to restrain continued discrimination;

(b) reinstatement to the position such employee would have had but for the discrimination or to an equivalent position;

(c) reinstatement of full fringe benefits and seniority rights;

(d) payment of two times back pay, plus interest; and

(e) compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

2. An employee described in subdivision one of this section may bring an action in the appropriate supreme court for the relief provided in this section.

§ 192. Limitation of actions, burden of proof

1. A civil action under this article shall be commenced no later than:

(a) six years after the date on which the violation of section one hundred eighty-nine of this article is committed; or

(b) three years after the date when facts material to the right of action are known or reasonably should have been known by the official of the state or local government charged with responsibility to act in the circumstances, but in no event more than ten years after the date on which the violation is committed, whichever occurs last. Notwithstanding any other provision of law, for the purposes of this article, an action under this article is commenced by the filing of the complaint in the supreme court.

2. In any action brought under this article, the state, a local government that participates as a party in the action, or the person bringing the qui tam civil action, shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

§ 193. Other law enforcement authority and duties

This article shall not:

1. preempt the authority, or relieve the duty, of other law enforcement agencies to investigate and prosecute suspected violations of law;

2. prevent or prohibit a person from voluntarily disclosing any information concerning a violation of this article to any law enforcement agency; or

3. limit any of the powers granted elsewhere in this chapter and other laws to the attorney general or state

agencies or local governments to investigate possible violations of this article and take appropriate action against wrongdoers.

§ 194. Regulations

The attorney general is authorized to adopt such rules and regulations as is necessary to effectuate the purposes of this article.

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DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

JUL 24 2008

Gerald J. Coyne
Deputy Attorney General
State of Rhode Island
150 South Main Street
Providence, Rhode Island 02903

Dear Mr. Coyne:

The Office of Inspector General (OIG) of the U.S. Department of Health and Human Services (HHS) has received your request to review the Rhode Island False Claims Act, R.I. Gen. Laws §§ 9-1.1-1 through 9-1.1-8, under the requirements of section 6031(b) of the Deficit Reduction Act (DRA). Section 6031 of the DRA provides a financial incentive for states to enact laws that establish liability to the state for individuals and entities that submit false or fraudulent claims to the state Medicaid program. For a state to qualify for this incentive, the state law must meet certain requirements enumerated under section 6031(b) of the DRA, as determined by the Inspector General of HHS in consultation with the Department of Justice (DOJ).

We understand that Rhode Island has enacted two versions of the Rhode Island False Claims Act. The law found at Budget Article 18, Section 1, ceased being effective on February 15, 2008, and another law, found at Budget Article 18, Section 2, became effective on that date. Based on our review and consultation with DOJ, we have determined that the law found at Section 2 of Budget Article 18, currently in effect, meets the requirements of section 6031(b) of the DRA.

Please note that a state that has a law in effect that OIG has determined meets the requirements of section 6031(b) of the DRA will be deemed in compliance with such requirements for so long as the law continues to meet such requirements. We would appreciate it if you would notify OIG of any amendment to the Rhode Island False Claims Act within 30 days after such amendment.

If you have any questions regarding this review, please contact me, or your staff may contact Susan Elter Gillin at (202)-205-9426 or susan.gillin@oig.hhs.gov or Katie Arnholt at (202) 205-3203 or katie.arnholt@oig.hhs.gov.

Sincerely,

Daniel R. Levinson

Daniel R. Levinson
Inspector General

cc: Aaron Blight, CMS

West's General Laws of Rhode Island Annotated Currentness
Title 9. Courts and Civil Procedure--Procedure Generally
➡ Chapter 1.1. The State False Claims Act
➡ **§ 9-1.1-1. Name of act**

This chapter may be cited as the State False Claims Act.

§ 9-1.1-2. Definitions

As used in this chapter:

(a) “State” means the state of Rhode Island; any agency of state government; and any political subdivision meaning any city, town, county or other governmental entity authorized or created by state law, including public corporations and authorities.

(b) “Guard” means the Rhode Island National Guard.

(c) “Investigation” means any inquiry conducted by any investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of this chapter.

(d) “Investigator” means a person who is charged by the Rhode Island attorney general, or his or her designee with the duty of conducting any investigation under this act, or any officer or employee of the State acting under the direction and supervision of the department of attorney general.

(e) “Documentary material” includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations, and any product of discovery.

(f) “Custodian” means the custodian, or any deputy custodian, designated by the attorney general under § 9-1.1-6 of the Rhode Island general laws.

(g) “Product of discovery” includes:

(1) the original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission, which is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature;

(2) any digest, analysis, selection, compilation, or derivation of any item listed in paragraph (1); and

(3) any index or other manner of access to any item listed in paragraph (1).

§ 9-1.1-3. Liability for certain acts

(a) Any person who:

(1) knowingly presents, or causes to be presented, to an officer or employee of the state or a member of the guard a false or fraudulent claim for payment or approval;

(2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the state;

(3) conspires to defraud the state by getting a false or fraudulent claim allowed or paid;

(4) has possession, custody, or control of property or money used, or to be used, by the state and, intending to defraud the state or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;

(5) authorized to make or deliver a document certifying receipt of property used, or to be used, by the state and, intending to defraud the state, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(6) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the state, or a member of the guard, who lawfully may not sell or pledge the property; or

(7) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the state, is liable to the state for a civil penalty of not less than five thousand dollars ($5,000) and not more than ten thousand dollars ($10,000), plus three (3) times the amount of damages which the state sustains because of the act of that person. A person violating this subsection (a) shall also be liable to the state for the costs of a civil action brought to recover any such penalty or damages.

(b) Knowing and knowingly defined. As used in this section, the terms “knowing” and “knowingly” mean that a person, with respect to information:

(1) has actual knowledge of the information;

(2) acts in deliberate ignorance of the truth or falsity of the information; or

(3) acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

(c) Claim defined. As used in this section, “claim” includes any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the state provides any portion of the money or property which is requested or demanded, or if the state will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

(d) Exclusion. This section does not apply to claims, records, or statements made under the Rhode Island personal income tax law contained in Rhode Island general laws chapter 44-30.

§ 9-1.1-4. Civil actions for false claims

(a) Responsibilities of the attorney general. The attorney general diligently shall investigate a violation under § 9-1.1-3 of this section. If under this section the attorney general finds that a person has violated or is violating section 9-1.1-3 the attorney general may bring a civil action under this section against the person.

(b) Actions by private persons.

(1) A person may bring a civil action for a violation of § 9-1.1-3 for the person and for the state. The action shall be brought in the name of the state. The action may be dismissed only if the court and the attorney general give written consent to the dismissal and their reasons for consenting.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the state upon the attorney general. The complaint shall be filed in camera, shall remain under seal for at least sixty (60) days, and shall not be served on the defendant until the court so orders. The state may elect to intervene and proceed with the action within sixty (60) days after it receives both the complaint and the material evidence and information.

(3) The state may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until twenty (20) days after the complaint is unsealed and served upon the defendant.

(4) Before the expiration of the sixty (60) day period or any extensions obtained under paragraph (3), the state shall:

(A) proceed with the action, in which case the action shall be conducted by the state; or

(B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

(5) When a person brings an action under this subsection (b), no person other than the state may intervene or bring a related action based on the facts underlying the pending action.

(c) Rights of the parties to Qui Tam actions.

(1) If the state proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2).

(2)(A) The state may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the state of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

(B) The state may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(C) Upon a showing by the state that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the state's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as:

(i) limiting the number of witnesses the person may call:

(ii) limiting the length of the testimony of such witnesses;

(iii) limiting the person's cross-examination of witnesses; or

(iv) otherwise limiting the participation by the person in the litigation.

(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(3) If the state elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the state so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the state's expense). When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the State to intervene at a later date upon a showing of good cause.

(4) Whether or not the state proceeds with the action, upon a showing by the state that certain actions of discovery by the person initiating the action would interfere with the state's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than sixty (60) days. Such a showing shall be conducted in camera. The court may extend the sixty (60) day period upon a further showing in camera that the state has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(5) Notwithstanding subsection (b), the state may elect to pursue its claim through any alternate remedy available to the state, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(d) Award to Qui Tam plaintiff.

(1) If the State proceeds with an action brought by a person under subsection 9-1.1-4(b), such person shall, subject to the second sentence of this paragraph, receive at least fifteen percent (15%) but not more than twenty-five percent (25%) of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or Auditor General's report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than ten percent (10%) of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph (1) shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. The state shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred by the attorney general, including reasonable attorneys' fees and costs, and the amount received shall be deposited in the false claims act fund created under this chapter. All such expenses, fees, and costs shall be awarded against the defendant.

(2) If the state does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than twenty-five percent (25%) and not more than thirty percent (30%) of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the state proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of § 9-1.1-3 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under paragraph (1) or (2) of this subsection (d), taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the violation of § 9-1.1-3, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the state to continue the action.

(4) If the state does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(e) Certain actions barred.

(1) No court shall have jurisdiction over an action brought by a former or present member of the guard under subsection 9-1.1-4(b) (actions by private persons) against a member of the guard arising out of such person's service in the guard.

(2) No court shall have jurisdiction over an action brought pursuant to subsection 9-1.1-4(b) (actions by private persons) against the governor, lieutenant governor, the attorney general, members of the general assembly, a member of the judiciary, the treasurer, secretary of state, the auditor general, any director of a state agency, and any other individual appointed to office by the governor if the action is based on evidence or information known to the state when the action was brought.

(3) In no event may a person bring an action under subsection 9-1.1-4(b) which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the state is already a party.

(4)(A) No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or auditor general's report, hearing, audit, or investigation, or from the news media, unless the action is brought by the attorney general or the person bringing the action is an original source of the information.

(B) For purposes of this exclusion, “original source” means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the state before filing an action under this section which is based on the information.

(f) State not liable for certain expenses. The state is not liable for expenses which a person incurs in bringing an action under this section.

(g) Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the seniority status such employee would have had but for the discrimination, two (2) times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate superior court for the relief provided in this subsection 9-1.1-4(g).

§ 9-1.1-5. False claims procedure

(a) A subpoena requiring the attendance of a witness at a trial or hearing conducted under § 9-1.1-4, may be served at any place in the state.

(b) A civil action under § 9-1.1-4 may not be brought:

(1) more than 6 years after the date on which the violation of § 9-1.1-3 is committed, or

(2) more than three (3) years after the date when facts material to the right of action are known or reasonably should have been known by the official of the state charged with responsibility to act in the circumstances, but in no event more than ten (10) years after the date on which the violation is committed, whichever occurs last.

(c) In any action brought under § 9-1.1-4, the state shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(d) Notwithstanding any other provision of law, a final judgment rendered in favor of the state in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under subsections 9-1.1-4(a) or 9-1.1-4(b).

§ 9-1.1-6. Subpoenas

(a) In general:

(1) Issuance and service. Whenever the attorney general has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to an investigation, the attorney general may, before commencing a civil proceeding under this act, issue in writing and cause to be served upon such person, a subpoena requiring such person:

(A) to produce such documentary material for inspection and copying,

(B) to answer, in writing, written interrogatories with respect to such documentary material or information,

(C) to give oral testimony concerning such documentary material or information, or

(D) to furnish any combination of such material, answers, or testimony.

The attorney general may delegate the authority to issue subpoenas under this subsection (a) to the sate police subject to conditions as the attorney general deems appropriate. Whenever a subpoena is an express demand for any product of discovery, the attorney general or his or her delegate shall cause to be served, in any manner authorized by this section, a copy of such demand upon the person from whom the discovery was obtained and shall notify the person to whom such demand is issued of the date on which such copy was served.

(2) Where a subpoena requires the production of documentary material, the respondent shall produce the original of the documentary material, provided, however, that the attorney general may agree that copies may be substituted for the originals. All documentary material kept or stored in electronic form, including electronic mail, shall be produced in hard copy, unless the attorney general agrees that electronic versions may be substituted for the hard copy. The production of documentary material shall be made at the respondent's expense.

(3) Contents and deadlines. Each subpoena issued under paragraph (1):

(A) Shall state the nature of the conduct constituting an alleged violation that is under investigation and the applicable provision of law alleged to be violated.

(B) Shall identify the individual causing the subpoena to be served and to whom communications regarding the subpoena should be directed.

(C) Shall state the date, place, and time at which the person is required to appear, produce written answers to interrogatories, produce documentary material or give oral testimony. The date shall not be less than ten (10) days from the date of service of the subpoena. Compliance with the subpoena shall be at the office of the attorney general.

(D) If the subpoena is for documentary material or interrogatories, shall describe the documents or information requested with specificity.

(E) Shall notify the person of the right to be assisted by counsel.

(F) Shall advise that the person has twenty (20) days from the date of service or up until the return date specified in the demand, whichever date is earlier, to move, modify, or set aside the subpoena pursuant to subparagraph (j)(2)(A) of this section.

(b) Protected material or information.

(1) In general. A subpoena issued under subsection (a) may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under:

(A) the standards applicable to subpoenas or subpoenas duces tecum issued by a court of this state to aid in a grand jury investigation; or

(B) the standards applicable to discovery requests under the Rhode Island superior court rules of civil procedure, to the extent that the application of such standards to any such subpoena is appropriate and consistent with the provisions and purposes of this section.

(2) Effect on other orders, rules, and laws. Any such subpoena which is an express demand for any product of discovery supersedes any inconsistent order, rule, or provision of law (other than this section) preventing or restraining disclosure of such product of discovery to any person. Disclosure of any product of discovery pursuant to any such subpoena does not constitute a waiver of any right or privilege which the person making such disclosure may be entitled to invoke to resist discovery of trial preparation materials.

(c) Service in general. Any subpoena issued under subsection (a) may be served by any person so authorized by the attorney general or by any person authorized to serve process on individuals within Rhode Island, through any method prescribed in the Rhode Island superior court rules of civil procedure or as otherwise set forth in this chapter.

(d) Service upon legal entities and natural persons.

(1) Legal entities. Service of any subpoena issued under subsection (a) or of any petition filed under subsection (j) may be made upon a partnership, corporation, association, or other legal entity by:

(A) delivering an executed copy of such subpoena or petition to any partner, executive officer, managing

agent, general agent, or registered agent of the partnership, corporation, association or entity;

(B) delivering an executed copy of such subpoena or petition to the principal office or place of business of the partnership, corporation, association, or entity; or

(C) depositing an executed copy of such subpoena or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity as its principal office or place of business.

(2) Natural person. Service of any such subpoena or petition may be made upon any natural person by:

(A) delivering an executed copy of such subpoena or petition to the person; or

(B) depositing an executed copy of such subpoena or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.

(e) Proof of service. A verified return by the individual serving any subpoena issued under subsection (a) or any petition filed under subsection (j) setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such subpoena.

(f) Documentary material.

(1) Sworn certificates. The production of documentary material in response to a subpoena served under this Section shall be made under a sworn certificate, in such form as the subpoena designates, by:

(A) in the case of a natural person, the person to whom the subpoena is directed, or

(B) in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person. The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the subpoena is directed has been produced and made available to the attorney general.

(2) Production of materials. Any person upon whom any subpoena for the production of documentary material has been served under this section shall make such material available for inspection and copying to the attorney general at the place designated in the subpoena, or at such other place as the attorney general and the person thereafter may agree and prescribe in writing, or as the court may direct under subsection (j)(1). Such material shall be made so available on the return date specified in such subpoena, or on such later date as the at-

torney general may prescribe in writing. Such person may, upon written agreement between the person and the attorney general, substitute copies for originals of all or any part of such material.

(g) Interrogatories. Each interrogatory in a subpoena served under this section shall be answered separately and fully in writing under oath and shall be submitted under a sworn certificate, in such form as the subpoena designates by:

(1) in the case of a natural person, the person to whom the subpoena is directed, or

(2) in the case of a person other than a natural person, the person or persons responsible for answering each interrogatory. If any interrogatory is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the subpoena and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

(h) Oral examinations.

(1) Procedures. The examination of any person pursuant to a subpoena for oral testimony served under this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of this state or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall, personally or by someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a certified copy of the transcript of the testimony in accordance with the instructions of the attorney general. This subsection shall not preclude the taking of testimony by any means authorized by, and in a manner consistent with, the Rhode Island superior court rules of civil procedure.

(2) Persons present. The investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney for and any other representative of the person giving the testimony, the attorney for the state, any person who may be agreed upon by the attorney for the state and the person giving the testimony, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

(3) Where testimony taken. The oral testimony of any person taken pursuant to a subpoena served under this section shall be taken in the county within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the attorney general and such person.

(4) Transcript of testimony. When the testimony is fully transcribed, the attorney general or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable op-

portunity to review and correct the transcript, in accordance with the rules applicable to deposition witnesses in civil cases. Upon payment of reasonable charges, the attorney general shall furnish a copy of the transcript to the witness, except that the attorney general may, for good cause, limit the witness to inspection of the official transcript of the witness' testimony.

(5) Conduct of oral testimony.

(A) Any person compelled to appear for oral testimony under a subpoena issued under subsection (a) may be accompanied, represented, and advised by counsel, who may raise objections based on matters of privilege in accordance with the rules applicable to depositions in civil cases. If such person refuses to answer any question, a petition may be filed in superior court under subsection (j)(1) for an order compelling such person to answer such question.

(B) If such person refuses any question on the grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with rules of criminal procedure.

(6) Witness fees and allowances. Any person appearing for oral testimony under a subpoena issued under subsection 9-1.1-6(a) shall be entitled to the same fees and allowances which are paid to witnesses in the superior court.

(7) Custodians of documents, answers, and transcripts.

(A) Designation. The attorney general or his or her delegate shall serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this section.

(B) Except as otherwise provided in this section, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, shall be available for examination by any individual, except as determined necessary by the attorney general and subject to the conditions imposed by him or her for effective enforcement of the laws of this state, or as otherwise provided by court order.

(C) Conditions for return of material. If any documentary material has been produced by any person in the course of any investigation pursuant to a subpoena under this section and:

(i) any case or proceeding before the court or grand jury arising out of such investigation, or any proceeding before any state agency involving such material, has been completed, or

(ii) no case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of such investigation, the custodian shall, upon written request of the person who

produced such material, return to such person any such material which has not passed into the control of any court, grand jury, or agency through introduction into the record of such case or proceeding.

(i) [No corresponding (i) in original bill].

(j) Judicial proceedings.

(1) Petition for enforcement. Whenever any person fails to comply with any subpoena issued under subsection (a), or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender such material, the attorney general may file, in the superior court of the county in which such person resides, is found, or transacts business, or the superior court in the he county in which an action filed pursuant to § 9-1.1-4 is pending if the action relates to the subject matter of the subpoena and serve upon such person a petition for an order of such court for the enforcement of the subpoena.

(2) Petition to modify or set aside subpoena.

(A) Any person who has received a subpoena issued under subsection (a) may file, in the superior court of any county within which such person resides, is found, or transacts business, and serve upon the attorney general a petition for an order of the court to modify or set aside such subpoena. In the case of a petition addressed to an express demand for any product of discovery, a petition to modify or set aside such demand may be brought only in the superior court of the county in which the proceeding in which such discovery was obtained is or was last pending. Any petition under this subparagraph (a) must be filed:

(i) within twenty (20) days after the date of service of the subpoena, or at any time before the return date specified in the subpoena, whichever date is earlier, or

(ii) within such longer period as may be prescribed in writing by the attorney general.

(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (a), and may be based upon any failure of the subpoena to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the subpoena, in whole or in part, except that the person filing the petition shall comply with any portion of the subpoena not sought to be modified or set aside.

(3) Petition to modify or set aside demand for product of discovery. In the case of any subpoena issued under subsection (a) which is an express demand for any product of discovery, the person from whom such discovery was obtained may file, in the superior court of the county in which the proceeding in which such discovery was obtained is or was last pending, a petition for an order of such court to modify or set aside those portions of the subpoena requiring production of any such product of discovery, subject to the same terms, conditions,

and limitations set forth in subparagraph (j)(2) of this section.

(4) Jurisdiction. Whenever any petition is filed in any superior court under this subsection (j), such court shall have jurisdiction to hear and determine the matter so presented, and to enter such orders as may be required to carry out the provisions of this section. Any final order so entered shall be subject to appeal in the same manner as appeals of other final orders in civil matters. Any disobedience of any final order entered under this section by any court shall be punished as a contempt of the court.

(k) Disclosure exemption. Any documentary material, answers to written interrogatories, or oral testimony provided under any subpoena issued under subsection (a) shall be exempt from disclosure under the Rhode Island access to public records law, § 38-2-2.

§ 9-1.1-7. Procedure

The Rhode Island superior court rules of civil procedure shall apply to all proceedings under this chapter, except when those rules are inconsistent with this Chapter.

§ 9-1.1-8. Funds

There is hereby created a separate fund entitled the false claims act fund. All proceeds of an action or settlement of a claim brought under this chapter shall be deposited in the Fund.

END OF DOCUMENT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

DEC 21 2006

Mr. Michael K. Bassham
Office of the Attorney General
Antitrust Division
P.O. Box 20207
Nashville, Tennessee 37202-0207

Dear Mr. Bassham:

The Office of Inspector General (OIG) of the U.S. Department of Health and Human Services (HHS) has received your request to review the Tennessee Medicaid False Claims Act, Tenn. Code Ann. §§ 71-5-181 – 185, under the requirements of section 6031(b) of the Deficit Reduction Act (DRA). Section 6031 of the DRA provides a financial incentive for states to enact laws that establish liability to the state for individuals and entities that submit false or fraudulent claims to the state Medicaid program. For a state to qualify for this incentive, the state law must meet certain requirements enumerated under section 6031(b) of the DRA, as determined by the Inspector General of HHS in consultation with the Department of Justice (DOJ). Based on our review of the law and consultation with DOJ, we have determined that the Tennessee Medicaid False Claims Act meets the requirements of section 6031(b) of the DRA.

Please note that a state that has a law in effect that meets the requirements of section 6031(b) of the DRA as of January 1, 2007, will be deemed in compliance with such requirements for so long as the law continues to meet such requirements. We would appreciate it if you would notify OIG of any amendment to the Tennessee Medicaid False Claims Act within 30 days after such amendment.

If you have any questions regarding this review, please contact me, or have your staff contact Lisa Re at 202-205-9213 or lisa.re@oig.hhs.gov.

Sincerely,

Daniel R. Levinson

Daniel R. Levinson
Inspector General

cc: Aaron Blight, CMS

West's Tennessee Code Annotated Currentness
Title 71. Welfare
Chapter 5. Programs and Services for Poor Persons (Refs & Annos)
Part 1. Medical Assistance (Refs & Annos)

§ 71-5-181. Short title

(a) The title of this section and §§ 71-5-182--71-5-185 is and may be cited as the "Tennessee Medicaid False Claims Act."

(b) "Medicaid program" as used in §§ 71-5-182--71-5-185 includes the TennCare program and any successor program to the medicaid program.

CREDIT(S)

1993 Pub.Acts, c. 364, § 1, eff. July 1, 1993.

RESEARCH REFERENCES

Treatises and Practice Aids

14 Causes of Action 2d 1, Cause of Action Under the False Claims Act (31 U.S.C.A. §§ 3729 to 3733) for Fraudulent Medicare or Medicaid Reimbursement.

T. C. A. § 71-5-181, TN ST § 71-5-181

Current through end of 2009 First Reg. Sess.

END OF DOCUMENT

West's Tennessee Code Annotated Currentness
Title 71. Welfare
Chapter 5. Programs and Services for Poor Persons (Refs & Annos)
Part 1. Medical Assistance (Refs & Annos)
§ 71-5-182. Damages; definitions; injunctions

(a) Any person who:

(1)(A) Presents, or causes to be presented, to the state a claim for payment under the medicaid program knowing such claim is false or fraudulent;

(B) Makes, uses, or causes to be made or used, a record or statement to get a false or fraudulent claim under the medicaid program paid for or approved by the state knowing such record or statement is false;

(C) Conspires to defraud the state by getting a claim allowed or paid under the medicaid program knowing such claim is false or fraudulent; or

(D) Makes, uses, or causes to be made or used, a record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state, relative to the medicaid program, knowing such record or statement is false;

Is liable to the state for a civil penalty of not less than five thousand dollars ($5,000) and not more than twenty-five thousand dollars ($25,000), plus three (3) times the amount of damages which the state sustains because of the act of that person.

(2) However, if the court finds that:

(A) The person committing the violation of this subsection (a) furnished officials of the state responsible for investigating false claims violations with all information known to such person about the violation within thirty (30) days after the date on which the defendant first obtained the information;

(B) Such person fully cooperated with any state investigation of such violation; and

(C) At the time such person furnished the state with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under § § 71---181--71-5-186 with respect to such

violation, and the person did not have actual knowledge of the existence of an investigation into such violation;

The court may assess not less than two (2) times the amount of damages which the state sustains because of the act of the person.

(3) A person violating this subsection (a) shall also be liable for the costs of a civil action brought to recover any such penalty or damages.

(b) For purposes of this section, “knowing” and “knowingly” mean that a person, with respect to information:

(1) Has actual knowledge of the information;

(2) Acts in deliberate ignorance of the truth or falsity of the information; or

(3) Acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

(c) “Claim” includes any request or demand for money, property, or services made to any employee, officer, or agent of the state, or to any contractor, grantee, or other recipient, whether under contract or not, if any portion of the money, property, or services requested or demanded was issued from, or was provided by, the state.

(d) Any person who engages, has engaged or proposes to engage in any act described by subsection (a) may be enjoined in any court of competent jurisdiction in an action brought by the attorney general; such action shall be brought in the name of the state and shall be granted if it is clearly shown that the state's rights are being violated by such person or entity and the state will suffer immediate and irreparable injury, loss or damage pending a final judgment in the action, or that the acts or omissions of such person or entity will tend to render such final judgment ineffectual. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent any act described by subsection (a) by any person or entity, or as may be necessary to restore to the Medicaid program any money or property, real or personal, which may have been acquired by means of such act.

CREDIT(S)

1993 Pub.Acts, c. 364, § 2, eff. July 1, 1993; 2004 Pub.Acts, c. 784, § 2, eff. May 28, 2004.

HISTORICAL AND STATUTORY NOTES

2004 Pub.Acts, c. 784, § 3, provides:

“The commissioner of the department of finance and administration, or the commissioner's designee, shall appear before and report in writing on fraud and abuse in the TennCare program to the TennCare oversight committee, the senate general welfare, health and human resources committee and the house health and human resources committee on at least an annual basis. Such report shall include commentary concerning implementation, rules and regulations concerning senate bill 3394 / house bill 3512 and senate bill 3392 / house bill 3513 if such bills become law.”

LIBRARY REFERENCES

Key Numbers

Health498.
Westlaw Topic No. 198H.

T. C. A. § 71-5-182, TN ST § 71-5-182

Current through end of 2009 First Reg. Sess.

END OF DOCUMENT

West's Tennessee Code Annotated Currentness
Title 71. Welfare
Chapter 5. Programs and Services for Poor Persons (Refs & Annos)
Part 1. Medical Assistance (Refs & Annos)
§ 71-5-183. Actions and proceedings

(a) If the attorney general and reporter finds that a person has violated or is violating § 71-5-182, the attorney general and reporter may bring a civil action under this section against the person.

(b)(1) A person may bring a civil action for a violation of § 71-5-182 for the person and for the state. The action shall be brought in the name of the state of Tennessee. The action may be dismissed only if the court and the attorney general and reporter or district attorney general give written consent to the dismissal and their reasons for consenting.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the state. The complaint shall be filed in camera, shall remain under seal for at least sixty (60) days, and shall not be served on the defendant until the court so orders. The state may elect to intervene and proceed with the action within sixty (60) days after it receives both the complaint and the material evidence and information.

(3) The state may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under subdivision (b)(2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until twenty (20) days after the complaint is unsealed and served upon the defendant.

(4) Before the expiration of the sixty-day period or any extensions obtained under subdivision (b)(3), the state shall:

(A) Proceed with the action, in which case the action shall be conducted by the state; or

(B) Notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

(5) When a person brings an action under this subsection (b), no person other than the state may intervene or bring a related action based on the facts underlying the pending action.

(c)(1) If the state proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in subdivision (c)(2).

(2)(A) The state may dismiss the action notwithstanding the objections of the person initiating the action, if the person has been notified by the state of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

(B) The state may settle the action with the defendant notwithstanding the objections of the person initiating the action, if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(C) Upon a showing by the state that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the state's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as:

(i) Limiting the number of witnesses the person may call;

(ii) Limiting the length of the testimony of such witnesses;

(iii) Limiting the person's cross-examination of witnesses; or

(iv) Otherwise limiting the participation by the person in the litigation.

(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(3) If the state elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the state so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts, at the state's expense. When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the state to intervene at a later date upon a showing of good cause.

(4) Whether or not the state proceeds with the action, upon a showing by the state that certain actions of discovery by the person initiating the action would interfere with the state's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than sixty (60) days. Such a showing shall be conducted in camera. The court may extend the sixty-day period upon a further showing in camera that the state has pursued the criminal or civil investigation or proceedings with reas-

onable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(5) Notwithstanding subsection (b), the state may elect to pursue its claim through any alternate remedy available to the state, including any administrative proceeding to determine a civil monetary penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceedings as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of this subdivision (c)(5), a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of jurisdiction, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(d)(1)(A) If the state proceeds with an action brought by a person under subsection (a), a person shall, subject to subdivision (d)(1)(B), receive at least fifteen percent (15%) but not more than twenty-five percent (25%) of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action.

(B) Where the action is one that the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions in a criminal, civil, or administrative hearing, report, audit, investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than ten percent (10%) of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation.

(C) Any payment to a person under subdivisions (d)(1)(A) and (d)(1)(B) shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) If the state does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount that the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than twenty-five percent (25%) and not more than thirty percent (30%) of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the state proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of § 71-5-182 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action that the person would otherwise receive under subdivision (d)(1) or (d)(2), taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is

convicted of criminal conduct arising from such person's role in the violation of § 71-5-181, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the state to continue the action.

(4) If the state does not proceed with the action and the person bringing the action conducts the action, the court shall award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(e)(1) In no event may a person bring an action under subsection (b) that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil monetary penalty proceeding in which the state is already a party.

(2)(A) No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, audit, investigation, or from the news media, unless the action is brought by the attorney general and reporter or district attorney general or the person bringing the action is an original source of the information.

(B) For purpose of this subdivision (e)(2), “original source” means an individual who has direct and independent knowledge of the information on which the allegations are based and who has voluntarily provided the information to the state before filing an action under this section that is based on the information.

(f) The state is not liable for expenses that a person incurs in bringing an action under this section.

(g) Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by such employee's employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, two (2) times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate court for the relief provided in this subsection (g).

(h)(1) Upon written request of the attorney general and reporter, the bureau of TennCare may bring an action as an administrative proceeding on behalf of the state for recovery under § 71-5-182 against any person specified by the attorney general and reporter other than an enrollee, recipient or applicant, subject to the conditions set forth in this subsection (h).

(2) The amount of actual damages that the state may seek in such administrative proceeding shall not exceed ten thousand dollars ($10,000). This limit shall not apply to any civil penalties or costs that the state is eligible to re-

cover under § 71-5-182 or to § 71-5-182 related to double or treble damages.

(3) Notwithstanding § 71-5-182, the civil penalty for each violation of § 71-5-182 in such administrative proceeding shall be not less than one thousand dollars ($1,000) and not more than five thousand dollars ($5,000).

(4) Any administrative action brought pursuant to this subsection (h) shall be subject to § 71-5-184.

(5) Any administrative action brought pursuant to this subsection (h) shall be initiated as a contested case in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(6) The bureau of TennCare shall have authority to promulgate rules and regulations pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, as are necessary to implement this subsection (h). For purposes of rendering a final order pursuant to the Uniform Administrative Procedures Act, the bureau of TennCare is designated as the agency to review initial orders and issue final agency decisions. Orders issued by the bureau of TennCare shall have the effect of a final order pursuant to the Uniform Administrative Procedures Act.

(7)(A) Whenever an order issued by the bureau of TennCare pursuant to this part has become final, a notarized copy of the order may be filed in the office of the clerk of the chancery court of Davidson County.

(B) When filed in accordance with this subsection (h), a final order shall be considered as a judgment by consent of the parties on the same terms and conditions as those recited in the order. The judgment shall be promptly entered by the court. Except as otherwise provided in this subsection (h), the procedure for entry of judgment and the effect of the judgment shall be the same as provided in title 26, chapter 6.

(C) A judgment entered pursuant to this subsection (h) shall become final on the date of entry.

(D) A final judgment under this subsection (h) has the same effect, is subject to the same procedures and may be enforced or satisfied in the same manner as any other judgment of a court of record of this state.

(8) Any recovery under this subsection (h) in excess of the amounts paid to reimburse the bureau of TennCare for damages and costs and to other interested parties shall be paid to the attorney general and reporter to be used to investigate and prosecute health care fraud in the TennCare program.

(9) This subsection (h) is declared to be remedial in nature and shall be liberally construed to effectuate its purposes.

CREDIT(S)

1993 Pub.Acts, c. 364, § 3, eff. July 1, 1993; 2005 Pub.Acts, c. 474, § 15, eff. June 18, 2005; 2009 Pub.Acts, c. 528, § 1, eff. June 25, 2009.

HISTORICAL AND STATUTORY NOTES

2005 Pub.Acts, c. 474, § 28, provides:

"To effectuate the provisions of this act, the Commissioners of Finance and Administration, Commerce and Insurance, and Health, for the respective sections of this act that their departments are responsible for implementing, shall have the authority to promulgate any necessary rules and regulations. All rules and regulations provided for by this section shall be promulgated as public necessity rules pursuant to Tennessee Code Annotated, Section 4-5-209. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5."

2009 Pub.Acts, c. 528, § 2, provides:

"SECTION 2. The provisions of this act are declared to be remedial in nature, and all provisions of this act shall be liberally construed to effectuate its purposes."

LIBRARY REFERENCES

Key Numbers

Health498, 510.

States192.

Westlaw Topic Nos. 198H, 360.

Corpus Juris Secundum

C.J.S. States § 308.

T. C. A. § 71-5-183, TN ST § 71-5-183

Current through end of 2009 First Reg. Sess.

END OF DOCUMENT

West's Tennessee Code Annotated Currentness
Title 71. Welfare
Chapter 5. Programs and Services for Poor Persons (Refs & Annos)
Part 1. Medical Assistance (Refs & Annos)

§ 71-5-184. Subpoenas; limitation of action; standard of proof; effect of judgment on criminal proceedings

(a) A subpoena requiring the attendance of a witness at a trial or hearing conducted under § 71-5-183 may be served at any place in the United States.

(b) A civil action under § 71-5-183 may not be brought:

(1) More than six (6) years after the date on which the violation of § 71-5-182 is committed; or

(2) More than three (3) years after the date when facts material to the right of action are known or reasonably should have been known by the official of the state charged with responsibility to act in the circumstances, but in no event more than ten (10) years after the date on which the violation is committed, whichever occurs last.

(c) In any action brought under § 71-5-183, the state shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(d) Notwithstanding any other provision of law, the Tennessee Rules of Criminal Procedure, or the Tennessee Rules of Evidence, a final judgment rendered in favor of the state in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall stop the defendant from denying the essential elements of the offense in any action that involves the same transaction as in the criminal proceeding and that is brought under subsection (a) or (b) or § 71-5-183.

CREDIT(S)

1993 Pub.Acts, c. 364, § 4, eff. July 1, 1993.

LIBRARY REFERENCES

Key Numbers

Health498, 510.

States201, 204.

Westlaw Topic Nos. 198H, 360.

Corpus Juris Secundum

C.J.S. States §§ 316, 321.

T. C. A. § 71-5-184, TN ST § 71-5-184

Current through end of 2009 First Reg. Sess.

END OF DOCUMENT

West's Tennessee Code Annotated Currentness
Title 71. Welfare
Chapter 5. Programs and Services for Poor Persons (Refs & Annos)
Part 1. Medical Assistance (Refs & Annos)
§ 71-5-185. Venue; summons

Any action under § 71-5-183 may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one (1) defendant can be found, resides, transacts business, or in which any act proscribed by § 71-5-182 occurred. A summons as required by the Rules of Civil Procedure shall be issued by the appropriate district court and served at any place within or outside the United States.

CREDIT(S)

1993 Pub.Acts, c. 364, § 5, eff. July 1, 1993.

LIBRARY REFERENCES

Key Numbers

Health498, 510.

States200.

Westlaw Topic Nos. 198H, 360.

Corpus Juris Secundum

C.J.S. States § 315.

T. C. A. § 71-5-185, TN ST § 71-5-185

Current through end of 2009 First Reg. Sess.

END OF DOCUMENT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

JUN 20 2007

Mr. Patrick O'Connell
Assistant Attorney General
Chief, Civil Medicaid Fraud Section
Elder Law and Public Health Division
Office of the Attorney General, State of Texas
P.O. Box 12548
Austin, Texas 78711

Dear Mr. O'Connell:

The Office of Inspector General (OIG) of the U.S. Department of Health and Human Services (HHS) has received your request to review the Texas Medicaid Fraud Prevention Act, Tex. Hum. Res. Code Ann. §§ 36.001 – 36.132, as amended by 2007 Texas S.B. 362 on May 4, 2007, under the requirements of section 6031(b) of the Deficit Reduction Act (DRA). Section 6031 of the DRA provides a financial incentive for states to enact laws that establish liability to the state for individuals and entities that submit false or fraudulent claims to the state Medicaid program. For a state to qualify for this incentive, the state law must meet certain requirements enumerated under section 6031(b) of the DRA, as determined by the Inspector General of HHS in consultation with the Department of Justice (DOJ). Based on our review of the law and consultation with DOJ, we have determined that the Texas Medicaid Fraud Prevention Act meets the requirements of section 6031(b) of the DRA.

Please note that a state law's compliance with section 6031(b) of the DRA may change if that law is later amended. Consequently, we would appreciate it if you would notify OIG of any amendment to the Texas Medicaid Fraud Prevention within 30 days after such amendment.

If you have any questions regarding this review, please contact me, or have your staff contact Roderick Chen at 202-619-2078 or roderick.chen@oig.hhs.gov.

Sincerely,

Daniel R. Levinson
Inspector General

cc: Aaron Blight, CMS

Vernon's Texas Statutes and Codes Annotated Currentness
Human Resources Code (Refs & Annos)
Title 2. Department of Human Services and Department of Protective and Regulatory Services (Refs & Annos)
Subtitle C. Assistance Programs
Chapter 36. Medicaid Fraud Prevention (Refs & Annos)
Subchapter A. General Provisions
§ 36.001. Definitions

In this chapter:

(1) “Claim” means a written or electronically submitted request or demand that:

(A) is signed by a provider or a fiscal agent and that identifies a product or service provided or purported to have been provided to a Medicaid recipient as reimbursable under the Medicaid program, without regard to whether the money that is requested or demanded is paid; or

(B) states the income earned or expense incurred by a provider in providing a product or a service and that is used to determine a rate of payment under the Medicaid program.

(2) “Documentary material” means a record, document, or other tangible item of any form, including:

(A) a medical document or X ray prepared by a person in relation to the provision or purported provision of a product or service to a Medicaid recipient;

(B) a medical, professional, or business record relating to:

(i) the provision of a product or service to a Medicaid recipient; or

(ii) a rate or amount paid or claimed for a product or service, including a record relating to a product or service provided to a person other than a Medicaid recipient as needed to verify the rate or amount;

(C) a record required to be kept by an agency that regulates health care providers; or

(D) a record necessary to disclose the extent of services a provider furnishes to Medicaid recipients.

(3) “Fiscal agent” means:

(A) a person who, through a contractual relationship with the Texas Department of Human Services, the Texas Department of Health, or another state agency, receives, processes, and pays a claim under the Medicaid program; or

(B) the designated agent of a person described by Paragraph (A).

(4) “Health care practitioner” means a dentist, podiatrist, psychologist, physical therapist, chiropractor, registered nurse, or other provider licensed to provide health care services in this state.

(5) “Managed care organization” has the meaning assigned by Section 32.039(a).

(6) “Medicaid program” means the state Medicaid program.

(7) “Medicaid recipient” means an individual on whose behalf a person claims or receives a payment from the Medicaid program or a fiscal agent, without regard to whether the individual was eligible for benefits under the Medicaid program.

(8) “Physician” means a physician licensed to practice medicine in this state.

(9) “Provider” means a person who participates in or who has applied to participate in the Medicaid program as a supplier of a product or service and includes:

(A) a management company that manages, operates, or controls another provider;

(B) a person, including a medical vendor, that provides a product or service to a provider or to a fiscal agent;

(C) an employee of a provider;

(D) a managed care organization; and

(E) a manufacturer or distributor of a product for which the Medicaid program provides reimbursement.

(10) “Service” includes care or treatment of a Medicaid recipient.

(11) “Signed” means to have affixed a signature directly or indirectly by means of handwriting, typewriting, signature stamp, computer impulse, or other means recognized by law.

(12) “Unlawful act” means an act declared to be unlawful under Section 36.002.

§ 36.0011. Culpable Mental State

(a) For purposes of this chapter, a person acts “knowingly” with respect to information if the person:

(1) has knowledge of the information;

(2) acts with conscious indifference to the truth or falsity of the information; or

(3) acts in reckless disregard of the truth or falsity of the information.

(b) Proof of the person's specific intent to commit an unlawful act under Section 36.002 is not required in a civil or administrative proceeding to show that a person acted “knowingly” with respect to information under this chapter.

§ 36.002. Unlawful Acts

A person commits an unlawful act if the person:

(1) knowingly makes or causes to be made a false statement or misrepresentation of a material fact to permit a person to receive a benefit or payment under the Medicaid program that is not authorized or that is greater than the benefit or payment that is authorized;

(2) knowingly conceals or fails to disclose information that permits a person to receive a benefit or payment under the Medicaid program that is not authorized or that is greater than the benefit or payment that is authorized;

(3) knowingly applies for and receives a benefit or payment on behalf of another person under the Medicaid program and converts any part of the benefit or payment to a use other than for the benefit of the person on whose behalf it was received;

(4) knowingly makes, causes to be made, induces, or seeks to induce the making of a false statement or misrepresentation of material fact concerning:

(A) the conditions or operation of a facility in order that the facility may qualify for certification or recertification required by the Medicaid program, including certification or recertification as:

(i) a hospital;

(ii) a nursing facility or skilled nursing facility;

(iii) a hospice;

(iv) an intermediate care facility for the mentally retarded;

(v) an assisted living facility; or

(vi) a home health agency; or

(B) information required to be provided by a federal or state law, rule, regulation, or provider agreement pertaining to the Medicaid program;

(5) except as authorized under the Medicaid program, knowingly pays, charges, solicits, accepts, or receives, in addition to an amount paid under the Medicaid program, a gift, money, a donation, or other consideration as a condition to the provision of a service or product or the continued provision of a service or product if the cost of the service or product is paid for, in whole or in part, under the Medicaid program;

(6) knowingly presents or causes to be presented a claim for payment under the Medicaid program for a product provided or a service rendered by a person who:

(A) is not licensed to provide the product or render the service, if a license is required; or

(B) is not licensed in the manner claimed;

(7) knowingly makes a claim under the Medicaid program for:

(A) a service or product that has not been approved or acquiesced in by a treating physician or health care practitioner;

(B) a service or product that is substantially inadequate or inappropriate when compared to generally recognized standards within the particular discipline or within the health care industry; or

(C) a product that has been adulterated, debased, mislabeled, or that is otherwise inappropriate;

(8) makes a claim under the Medicaid program and knowingly fails to indicate the type of license and the identification number of the licensed health care provider who actually provided the service;

(9) knowingly enters into an agreement, combination, or conspiracy to defraud the state by obtaining or aiding another person in obtaining an unauthorized payment or benefit from the Medicaid program or a fiscal agent;

(10) is a managed care organization that contracts with the Health and Human Services Commission or other state agency to provide or arrange to provide health care benefits or services to individuals eligible under the Medicaid program and knowingly:

(A) fails to provide to an individual a health care benefit or service that the organization is required to provide under the contract;

(B) fails to provide to the commission or appropriate state agency information required to be provided by law, commission or agency rule, or contractual provision; or

(C) engages in a fraudulent activity in connection with the enrollment of an individual eligible under the Medicaid program in the organization's managed care plan or in connection with marketing the organization's services to an individual eligible under the Medicaid program;

(11) knowingly obstructs an investigation by the attorney general of an alleged unlawful act under this section;

(12) knowingly makes, uses, or causes the making or use of a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to this state under the Medicaid program; or

(13) knowingly engages in conduct that constitutes a violation under Section 32.039(b).

§ 36.003. Documentary Material in Possession of State Agency

(a) A state agency, including the Health and Human Services Commission, the Texas Department of Human Services, the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, or the Department of Protective and Regulatory Services, shall provide the attorney general access to all documentary materials of persons and Medicaid recipients under the Medicaid program to which that agency has access. Documentary material provided under this subsection is provided to permit investigation of an alleged unlawful act or for use or potential use in an administrative or judicial proceeding.

(b) Except as ordered by a court for good cause shown, the office of the attorney general may not produce for inspection or copying or otherwise disclose the contents of documentary material obtained under this section to a person other than:

(1) an employee of the attorney general;

(2) an agency of this state, the United States, or another state;

(3) a criminal district attorney, district attorney, or county attorney of this state;

(4) the United States attorney general;

(5) a state or federal grand jury;

(6) a political subdivision of this state; or

(7) a person authorized by the attorney general to receive the information.

§ 36.004. Immunity

Notwithstanding any other law, a person is not civilly or criminally liable for providing access to documentary material under this chapter to:

(1) an employee of the attorney general;

(2) an agency of this state, the United States, or another state;

(3) a criminal district attorney, district attorney, or county attorney of this state;

(4) the United States attorney general;

(5) a state or federal grand jury;

(6) a political subdivision of this state; or

(7) a person authorized by the attorney general to receive the information.

§ 36.005. Suspension or Revocation of Agreement; Professional Discipline

(a) A health and human services agency, as defined by Section 531.001, Government Code:

(1) shall suspend or revoke:

(A) a provider agreement between the agency and a person, other than a person who operates a nursing facility or an ICF-MR facility, found liable under Section 36.052; and

(B) a permit, license, or certification granted by the agency to a person, other than a person who operates a nursing facility or an ICF-MR facility, found liable under Section 36.052; and

(2) may suspend or revoke:

(A) a provider agreement between the agency and a person who operates a nursing facility or an ICF-MR facility and who is found liable under Section 36.052; or

(B) a permit, license, or certification granted by the agency to a person who operates a nursing facility or an ICF-MR facility and who is found liable under Section 36.052.

(b) A provider found liable under Section 36.052 for an unlawful act may not, for a period of 10 years, provide or arrange to provide health care services under the Medicaid program or supply or sell, directly or indirectly, a product to or under the Medicaid program. The executive commissioner of the Health and Human Services Commission may by rule:

(1) provide for a period of ineligibility longer than 10 years; or

(2) grant a provider a full or partial exemption from the period of ineligibility required by this subsection if the executive commissioner finds that enforcement of the full period of ineligibility is harmful to the Medicaid program or a beneficiary of the program.

(b-1) The period of ineligibility begins on the date on which the determination that the provider is liable becomes final.

(b-2) Subsections (b) and (b-1) do not apply to a provider who operates a nursing facility or an ICF-MR facility.

(c) A person licensed by a state regulatory agency who commits an unlawful act is subject to professional discipline under the applicable licensing law or rules adopted under that law.

(d) For purposes of this section, a person is considered to have been found liable under Section 36.052 if the person is found liable in an action brought under Subchapter C. [FN1]

[FN1] V.T.C.A., Human Resources Code § 36.101 et seq.

§ 36.006. Application of Other Law

The application of a civil remedy under this chapter does not preclude the application of another common law, statutory, or regulatory remedy, except that a person may not be liable for a civil remedy under this chapter and civil damages or a penalty under Section 32.039 if the civil remedy and civil damages or penalty are assessed for the same act.

§ 36.007. Recovery of Costs, Fees, and Expenses

The attorney general may recover fees, expenses, and costs reasonably incurred in obtaining injunctive relief or civil remedies or in conducting investigations under this chapter, including court costs, reasonable attorney's fees, witness fees, and deposition fees.

§ 36.008. Use of Money Recovered

The legislature, in appropriating money recovered under this chapter, shall consider the requirements of the attorney general and other affected state agencies in investigating Medicaid fraud and enforcing this chapter.

§§ 36.009 to 36.012. Renumbered as V.T.C.A., Human Resources Code §§ 36.005 to 36.008 by Acts 1997, 75th Leg., ch. 1153, § 4.01(a), eff. Sept. 1, 1997

§§ 36.009 to 36.012. Renumbered as V.T.C.A., Human Resources Code §§ 36.005 to 36.008 by Acts 1997, 75th Leg., ch. 1153, § 4.01(a), eff. Sept. 1, 1997

§ 36.051. Injunctive Relief

(a) If the attorney general has reason to believe that a person is committing, has committed, or is about to commit an unlawful act, the attorney general may institute an action for an appropriate order to restrain the person from committing or continuing to commit the act.

(b) An action under this section shall be brought in a district court of Travis County or of a county in which any part of the unlawful act occurred, is occurring, or is about to occur.

§ 36.052. Civil Remedies

(a) Except as provided by Subsection (c), a person who commits an unlawful act is liable to the state for:

(1) the amount of any payment or the value of any monetary or in-kind benefit provided under the Medicaid program, directly or indirectly, as a result of the unlawful act, including any payment made to a third party;

(2) interest on the amount of the payment or the value of the benefit described by Subdivision (1) at the pre-judgment interest rate in effect on the day the payment or benefit was received or paid, for the period from the date the benefit was received or paid to the date that the state recovers the amount of the payment or value of the benefit;

(3) a civil penalty of:

(A) not less than $5,000 or more than $15,000 for each unlawful act committed by the person that results in injury to an elderly person, as defined by Section 48.002(a)(1), a disabled person, as defined by Section 48.002(a)(8)(A), or a person younger than 18 years of age; or

(B) not less than $5,000 or more than $10,000 for each unlawful act committed by the person that does not result in injury to a person described by Paragraph (A); and

(4) two times the amount of the payment or the value of the benefit described by Subdivision (1).

(b) In determining the amount of the civil penalty described by Subsection (a)(3), the trier of fact shall consider:

(1) whether the person has previously violated the provisions of this chapter;

(2) the seriousness of the unlawful act committed by the person, including the nature, circumstances, extent, and gravity of the unlawful act;

(3) whether the health and safety of the public or an individual was threatened by the unlawful act;

(4) whether the person acted in bad faith when the person engaged in the conduct that formed the basis of the unlawful act; and

(5) the amount necessary to deter future unlawful acts.

(c) The trier of fact may assess a total of not more than two times the amount of a payment or the value of a

benefit described by Subsection (a)(1) if the trier of fact finds that:

(1) the person furnished the attorney general with all information known to the person about the unlawful act not later than the 30th day after the date on which the person first obtained the information; and

(2) at the time the person furnished all the information to the attorney general, the attorney general had not yet begun an investigation under this chapter.

(d) An action under this section shall be brought in Travis County or in a county in which any part of the unlawful act occurred.

(e) The attorney general may:

(1) bring an action for civil remedies under this section together with a suit for injunctive relief under Section 36.051; or

(2) institute an action for civil remedies independently of an action for injunctive relief.

§ 36.053. Investigation

(a) The attorney general may take action under Subsection (b) if the attorney general has reason to believe that:

(1) a person has information or custody or control of documentary material relevant to the subject matter of an investigation of an alleged unlawful act;

(2) a person is committing, has committed, or is about to commit an unlawful act; or

(3) it is in the public interest to conduct an investigation to ascertain whether a person is committing, has committed, or is about to commit an unlawful act.

(b) In investigating an unlawful act, the attorney general may:

(1) require the person to file on a prescribed form a statement in writing, under oath or affirmation, as to all the facts and circumstances concerning the alleged unlawful act and other information considered necessary by the attorney general;

(2) examine under oath a person in connection with the alleged unlawful act; and

(3) execute in writing and serve on the person a civil investigative demand requiring the person to produce the documentary material and permit inspection and copying of the material under Section 36.054.

(c) The office of the attorney general may not release or disclose information that is obtained under Subsection (b)(1) or (2) or any documentary material or other record derived from the information except:

(1) by court order for good cause shown;

(2) with the consent of the person who provided the information;

(3) to an employee of the attorney general;

(4) to an agency of this state, the United States, or another state;

(5) to any attorney representing the state under Section 36.055 or in a civil action brought under Subchapter C;

(6) to a political subdivision of this state; or

(7) to a person authorized by the attorney general to receive the information.

(d) The attorney general may use documentary material derived from information obtained under Subsection (b)(1) or (2), or copies of that material, as the attorney general determines necessary in the enforcement of this chapter, including presentation before a court.

(e) If a person fails to file a statement as required by Subsection (b)(1) or fails to submit to an examination as required by Subsection (b)(2), the attorney general may file in a district court of Travis County a petition for an order to compel the person to file the statement or submit to the examination within a period stated by court order. Failure to comply with an order entered under this subsection is punishable as contempt.

(f) An order issued by a district court under this section is subject to appeal to the supreme court.

§ 36.054. Civil Investigative Demand

(a) An investigative demand must:

(1) state the rule or statute under which the alleged unlawful act is being investigated and the general subject matter of the investigation;

(2) describe the class or classes of documentary material to be produced with reasonable specificity to fairly indicate the documentary material demanded;

(3) prescribe a return date within which the documentary material is to be produced; and

(4) identify an authorized employee of the attorney general to whom the documentary material is to be made available for inspection and copying.

(b) A civil investigative demand may require disclosure of any documentary material that is discoverable under the Texas Rules of Civil Procedure.

(c) Service of an investigative demand may be made by:

(1) delivering an executed copy of the demand to the person to be served or to a partner, an officer, or an agent authorized by appointment or by law to receive service of process on behalf of that person;

(2) delivering an executed copy of the demand to the principal place of business in this state of the person to be served; or

(3) mailing by registered or certified mail an executed copy of the demand addressed to the person to be served at the person's principal place of business in this state or, if the person has no place of business in this state, to a person's principal office or place of business.

(d) Documentary material demanded under this section shall be produced for inspection and copying during normal business hours at the office of the attorney general or as agreed by the person served and the attorney general.

(e) The office of the attorney general may not produce for inspection or copying or otherwise disclose the contents of documentary material obtained under this section except:

(1) by court order for good cause shown;

(2) with the consent of the person who produced the information;

(3) to an employee of the attorney general;

(4) to an agency of this state, the United States, or another state;

(5) to any attorney representing the state under Section 36.055 or in a civil action brought under Subchapter C;

(6) to a political subdivision of this state; or

(7) to a person authorized by the attorney general to receive the information.

(e-1) The attorney general shall prescribe reasonable terms and conditions allowing the documentary material to be available for inspection and copying by the person who produced the material or by an authorized representative of that person. The attorney general may use the documentary material or copies of it as the attorney general determines necessary in the enforcement of this chapter, including presentation before a court.

(f) A person may file a petition, stating good cause, to extend the return date for the demand or to modify or set aside the demand. A petition under this section shall be filed in a district court of Travis County and must be filed before the earlier of:

(1) the return date specified in the demand; or

(2) the 20th day after the date the demand is served.

(g) Except as provided by court order, a person on whom a demand has been served under this section shall comply with the terms of an investigative demand.

(h) A person who has committed an unlawful act in relation to the Medicaid program in this state has submitted to the jurisdiction of this state and personal service of an investigative demand under this section may be made on the person outside of this state.

(i) This section does not limit the authority of the attorney general to conduct investigations or to access a person's documentary materials or other information under another state or federal law, the Texas Rules of Civil Procedure, or the Federal Rules of Civil Procedure.

(j) If a person fails to comply with an investigative demand, or if copying and reproduction of the documentary material demanded cannot be satisfactorily accomplished and the person refuses to surrender the documentary material, the attorney general may file in a district court of Travis County a petition for an order to enforce the investigative demand.

(k) If a petition is filed under Subsection (j), the court may determine the matter presented and may enter an order to implement this section.

(l) Failure to comply with a final order entered under Subsection (k) is punishable by contempt.

(m) A final order issued by a district court under Subsection (k) is subject to appeal to the supreme court.

§ 36.055. Attorney General as Relator in Federal Action

To the extent permitted by 31 U.S.C. Sections 3729-3733, the attorney general may bring an action as relator under 31 U.S.C. Section 3730 with respect to an act in connection with the Medicaid program for which a person may be held liable under 31 U.S.C. Section 3729. The attorney general may contract with a private attorney to represent the state under this section.

§ 36.101. Action by Private Person Authorized

(a) A person may bring a civil action for a violation of Section 36.002 for the person and for the state. The action shall be brought in the name of the person and of the state.

(b) In an action brought under this subchapter, a person who violates Section 36.002 is liable as provided by Section 36.052.

§ 36.102. Initiation of Action

(a) A person bringing an action under this subchapter shall serve a copy of the petition and a written disclosure of substantially all material evidence and information the person possesses on the attorney general in compliance with the Texas Rules of Civil Procedure.

(b) The petition shall be filed in camera and, except as provided by Subsection (c-1) or (d), shall remain under seal until at least the 180th day after the date the petition is filed or the date on which the state elects to intervene, whichever is earlier. The petition may not be served on the defendant until the court orders service on the defendant.

(c) The state may elect to intervene and proceed with the action not later than the 180th day after the date the attorney general receives the petition and the material evidence and information.

(c-1) At the time the state intervenes, the attorney general may file a motion with the court requesting that the petition remain under seal for an extended period.

(d) The state may, for good cause shown, move the court to extend the 180-day deadline under Subsection (b) or (c). A motion under this subsection may be supported by affidavits or other submissions in camera.

(e) An action under this subchapter may be dismissed before the end of the period during which the petition remains under seal only if the court and the attorney general consent in writing to the dismissal and state their

reasons for consenting.

§ 36.1021. Standard of Proof

In an action under this subchapter, the state or person bringing the action must establish each element of the action, including damages, by a preponderance of the evidence.

§ 36.103. Answer by Defendant

A defendant is not required to file in accordance with the Texas Rules of Civil Procedure an answer to a petition filed under this subchapter until the petition is unsealed and served on the defendant.

§ 36.104. State Decision; Continuation of Action

(a) Not later than the last day of the period prescribed by Section 36.102(c) or an extension of that period as provided by Section 36.102(d), the state shall:

(1) proceed with the action; or

(2) notify the court that the state declines to take over the action.

(b) If the state declines to take over the action, the person bringing the action may proceed without the state's participation. On request by the state, the state is entitled to be served with copies of all pleadings filed in the action and be provided at the state's expense with copies of all deposition transcripts. If the person bringing the action proceeds without the state's participation, the court, without limiting the status and right of that person, may permit the state to intervene at a later date on a showing of good cause.

§ 36.105. Representation of State by Private Attorney

The attorney general may contract with a private attorney to represent the state in an action under this subchapter with which the state elects to proceed.

§ 36.106. Intervention by Other Parties Prohibited

A person other than the state may not intervene or bring a related action based on the facts underlying a pending action brought under this subchapter.

§ 36.107. Rights of Parties if State Continues Action

(a) If the state proceeds with the action, the state has the primary responsibility for prosecuting the action and is not bound by an act of the person bringing the action. The person bringing the action has the right to continue as a party to the action, subject to the limitations set forth by this section.

(b) The state may dismiss the action notwithstanding the objections of the person bringing the action if:

(1) the attorney general notifies the person that the state has filed a motion to dismiss; and

(2) the court provides the person with an opportunity for a hearing on the motion.

(c) The state may settle the action with the defendant notwithstanding the objections of the person bringing the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. On a showing of good cause, the hearing may be held in camera.

(d) On a showing by the state that unrestricted participation during the course of the litigation by the person bringing the action would interfere with or unduly delay the state's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may impose limitations on the person's participation, including:

(1) limiting the number of witnesses the person may call;

(2) limiting the length of the testimony of witnesses called by the person;

(3) limiting the person's cross-examination of witnesses; or

(4) otherwise limiting the participation by the person in the litigation.

(e) On a showing by the defendant that unrestricted participation during the course of the litigation by the person bringing the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

§ 36.108. Stay of Certain Discovery

(a) On a showing by the state that certain actions of discovery by the person bringing the action would interfere with the state's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay the discovery for a period not to exceed 60 days.

(b) The court shall hear a motion to stay discovery under this section in camera.

(c) The court may extend the period prescribed by Subsection (a) on a further showing in camera that the state has pursued the criminal or civil investigation or proceedings with reasonable diligence and that any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

§ 36.109. Pursuit of Alternate Remedy by State

(a) Notwithstanding Section 36.101, the state may elect to pursue the state's claim through any alternate remedy available to the state, including any administrative proceeding to determine an administrative penalty. If an alternate remedy is pursued in another proceeding, the person bringing the action has the same rights in the other proceeding as the person would have had if the action had continued under this subchapter.

(b) A finding of fact or conclusion of law made in the other proceeding that has become final is conclusive on all parties to an action under this subchapter. For purposes of this subsection, a finding or conclusion is final if:

(1) the finding or conclusion has been finally determined on appeal to the appropriate court;

(2) no appeal has been filed with respect to the finding or conclusion and all time for filing an appeal has expired; or

(3) the finding or conclusion is not subject to judicial review.

§ 36.110. Award to Private Plaintiff

(a) If the state proceeds with an action under this subchapter, the person bringing the action is entitled, except as provided by Subsection (b), to receive at least 15 percent but not more than 25 percent of the proceeds of the action, depending on the extent to which the person substantially contributed to the prosecution of the action.

(a-1) If the state does not proceed with an action under this subchapter, the person bringing the action is entitled, except as provided by Subsection (b), to receive at least 25 percent but not more than 30 percent of the proceeds of the action. The entitlement of a person under this subsection is not affected by any subsequent intervention in the action by the state in accordance with Section 36.104(b).

(b) If the court finds that the action is based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions in a criminal or civil hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media,

the court may award the amount the court considers appropriate but not more than seven percent of the proceeds of the action. The court shall consider the significance of the information and the role of the person bringing the action in advancing the case to litigation.

(c) A payment to a person under this section shall be made from the proceeds of the action. A person receiving a payment under this section is also entitled to receive from the defendant an amount for reasonable expenses, reasonable attorney's fees, and costs that the court finds to have been necessarily incurred. The court's determination of expenses, fees, and costs to be awarded under this subsection shall be made only after the defendant has been found liable in the action.

(d) In this section, “proceeds of the action” includes proceeds of a settlement of the action.

§ 36.111. Reduction of Award

(a) If the court finds that the action was brought by a person who planned and initiated the violation of Section 36.002 on which the action was brought, the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action the person would otherwise receive under Section 36.110, taking into account the person's role in advancing the case to litigation and any relevant circumstances pertaining to the violation.

(b) If the person bringing the action is convicted of criminal conduct arising from the person's role in the violation of Section 36.002, the court shall dismiss the person from the civil action and the person may not receive any share of the proceeds of the action. A dismissal under this subsection does not prejudice the right of the state to continue the action.

§ 36.112. Award to Defendant for Frivolous Action

Chapter 105, Civil Practice and Remedies Code, applies in an action under this subchapter with which the state proceeds.

§ 36.113. Certain Actions Barred

(a) A person may not bring an action under this subchapter that is based on allegations or transactions that are the subject of a civil suit or an administrative penalty proceeding in which the state is already a party.

(b) A person may not bring an action under this subchapter that is based on the public disclosure of allegations or transactions in a criminal or civil hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, unless the person bringing the action is an original source of the information. In this subsection, “original source” means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the state before

filing an action under this subchapter that is based on the information.

§ 36.114. State Not Liable for Certain Expenses

The state is not liable for expenses that a person incurs in bringing an action under this subchapter.

§ 36.115. Retaliation by Employer Against Person Bringing Suit Prohibited

(a) A person who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms of employment by the person's employer because of a lawful act taken by the person in furtherance of an action under this subchapter, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this subchapter, is entitled to:

(1) reinstatement with the same seniority status the person would have had but for the discrimination; and

(2) not less than two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees.

(b) A person may bring an action in the appropriate district court for the relief provided in this section.

§ 36.116. Sovereign Immunity Not Waived

Except as provided by Section 36.112, this subchapter does not waive sovereign immunity.

§ 36.117. Attorney General Compensation

The office of the attorney general may retain a reasonable portion of recoveries under this subchapter, not to exceed amounts specified in the General Appropriations Act, for the administration of this subchapter.

§ 36.131. Repealed by Acts 2005, 79th Leg., ch. 806, § 19, eff. Sept. 1, 2005

§ 36.132. Revocation of Licenses

(a) In this section:

(1) “License” means a license, certificate, registration, permit, or other authorization that:

(A) is issued by a licensing authority;

(B) is subject before expiration to suspension, revocation, forfeiture, or termination by an issuing licensing authority; and

(C) must be obtained before a person may practice or engage in a particular business, occupation, or profession.

(2) “Licensing authority” means:

(A) the Texas Medical Board;

(B) the State Board of Dental Examiners;

(C) the Texas State Board of Examiners of Psychologists;

(D) the Texas State Board of Social Worker Examiners;

(E) the Texas Board of Nursing;

(F) the Texas Board of Physical Therapy Examiners;

(G) the Texas Board of Occupational Therapy Examiners; or

(H) another state agency authorized to regulate a provider who receives or is eligible to receive payment for a health care service under the Medicaid program.

(b) A licensing authority shall revoke a license issued by the authority to a person if the person is convicted of a felony under Section 35A.02, Penal Code. In revoking the license, the licensing authority shall comply with all procedures generally applicable to the licensing authority in revoking licenses.

END OF DOCUMENT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

MAR 13 2007

The Honorable Robert McDonnell
Attorney General
Commonwealth of Virginia
900 East Main Street
Richmond, Virginia 23209

Dear Attorney General:

The Office of Inspector General (OIG) of the U.S. Department of Health and Human Services (HHS) has received your request to review the Virginia Fraud Against Taxpayers Act, Va. Code Ann. §§ 8.01-216.1 – 8.01-216.19, under the requirements of section 6031(b) of the Deficit Reduction Act (DRA). Section 6031 of the DRA provides a financial incentive for States to enact laws that establish liability to the State for individuals and entities that submit false or fraudulent claims to the State Medicaid program. For a State to qualify for this incentive, the State law must meet certain requirements enumerated under section 6031(b) of the DRA, as determined by the Inspector General of HHS in consultation with the Department of Justice (DOJ). Based on our review of the law and in consultation with DOJ, we have determined that the Virginia Fraud Against Taxpayers Act meets the requirements of section 6031(b) of the DRA.

Please note that a State that has a law in effect that meets the requirements of section 6031(b) of the DRA will be deemed in compliance with such requirements for so long as the law continues to meet such requirements. We would appreciate it if you would notify OIG of any amendment to the Virginia Fraud Against Taxpayers Act within 30 days after such amendment.

If you have any questions regarding this review, please contact me, or your staff may contact Karla Hampton at 202-619-2078 or karla.hampton@oig.hhs.gov.

Sincerely,

Daniel R. Levinson

Daniel R. Levinson
Inspector General

cc: Aaron Blight, CMS

West's Annotated Code of Virginia Currentness
Title 8.01. Civil Remedies and Procedure (Refs & Annos)
Chapter 3. Actions (Refs & Annos)
Article 19.1. Virginia Fraud Against Taxpayers Act (Refs & Annos)
§ 8.01-216.1. Citation

This article may be cited as the Virginia Fraud Against Taxpayers Act.

§ 8.01-216.2. Definitions

As used in this article, unless the context requires otherwise:

"Attorney General" means the Attorney General of Virginia, the Chief Deputy, other deputies, counsels or assistant attorneys general employed by the Office of the Attorney General and designated by the Attorney General to act pursuant to this article.

"Claim" means any request or demand, whether under a contract or otherwise, for money or property that is made to a contractor, grantee, or other recipient if the Commonwealth provides any portion of the money or property that is requested or demanded, or if the Commonwealth will reimburse such contractor, grantee, or other recipient for any portion of the money or property that is requested or demanded.

"Commonwealth" means the Commonwealth of Virginia, any agency of state government, and any political subdivision of the Commonwealth.

"Documentary material" means the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations, and any product of discovery.

"Investigation" means any inquiry conducted by an investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of this article.

"Person" includes any natural person, corporation, firm, association, organization, partnership, limited liability company, business or trust.

"Product of discovery" means (i) the original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission, which is obtained by any method

of discovery in any judicial or administrative proceeding of an adversarial nature; (ii) any digest, analysis, selection, compilation, or derivation of any item listed in clause (i); and (iii) any index or other manner of access to any item listed in clause (i).

§ 8.01-216.3. False claims; civil penalty

A. Any person who:

1. Knowingly presents, or causes to be presented, to an officer or employee of the Commonwealth a false or fraudulent claim for payment or approval;

2. Knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Commonwealth;

3. Conspires to defraud the Commonwealth by getting a false or fraudulent claim allowed or paid;

4. Has possession, custody, or control of property or money used, or to be used, by the Commonwealth and, intending to defraud the Commonwealth or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;

5. Authorizes to make or deliver a document certifying receipt of property used, or to be used, by the Commonwealth and, intending to defraud the Commonwealth, makes or delivers the receipt without completely knowing that the information on the receipt is true;

6. Knowingly buys or receives as a pledge of an obligation or debt, public property from an officer or employee of the Commonwealth who lawfully may not sell or pledge the property; or

7. Knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Commonwealth;

shall be liable to the Commonwealth for a civil penalty of not less than $5,500 and not more than $11,000, plus three times the amount of damages sustained by the Commonwealth.

A person violating this section shall be liable to the Commonwealth for reasonable attorney fees and costs of a civil action brought to recover any such penalties or damages. All such fees and costs shall be paid to the Attorney General's Office by the defendant and shall not be included in any damages or civil penalties recovered in a civil action based on a violation of this section.

B. If the court finds that (i) the person committing the violation of this section furnished officials of the Com-

monwealth responsible for investigating false claims violations with all information known to the person about the violation within 30 days after the date on which the defendant first obtained the information; (ii) such person fully cooperated with any Commonwealth investigation of such violation; (iii) at the time such person furnished the Commonwealth with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced with respect to such violation, and (iv) the person did not have actual knowledge of the existence of an investigation into such violation, the court may assess not less than two times the amount of damages that the Commonwealth sustains because of the act of the person. A person violating this section shall also be liable to the Commonwealth for the costs of a civil action brought to recover any such penalty or damages.

C. For purposes of this section, the terms “knowing” and “knowingly” mean that a person, with respect to information (i) has actual knowledge of the information; (ii) acts in deliberate ignorance of the truth or falsity of the information; or (iii) acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

D. This section shall not apply to claims, records or statements relating to state or local taxes.

§ 8.01-216.4. Attorney General; investigation, civil action

The Attorney General shall investigate any violation of § 8.01-216.3. If the Attorney General finds that a person has violated or is violating § 8.01-216.3, the Attorney General may bring a civil action under this section.

§ 8.01-216.5. Civil actions filed by private persons; Commonwealth may intervene

A. A person may bring a civil action for a violation of § 8.01-216.3 for the person and for the Commonwealth. The action shall be brought in the name of the Commonwealth. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.

B. A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Commonwealth. The complaint shall be filed in camera, shall remain under seal for at least 120 days, and shall not be served on the defendant until the court so orders. The Commonwealth may elect to intervene and proceed with the action within 120 days after it receives both the complaint and the material evidence and information.

C. The Commonwealth may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal. Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any motion for judgment filed under this section until twenty-one days after the complaint is unsealed and served upon the defendant.

D. Before the expiration of the 120-day period or any extensions obtained under subsection C, the Common-

wealth shall proceed with the action, in which case the action shall be conducted by the Commonwealth, or notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to prosecute the action.

E. When a person brings an action under this section, no person other than the Commonwealth may intervene or bring a related action based on the facts underlying the pending action.

§ 8.01-216.6. Rights of private plaintiff and Commonwealth

A. If the Commonwealth proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations of this section.

B. The Commonwealth may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the Commonwealth of the filing of the complaint and the court has provided the person with an opportunity for a hearing on the complaint.

C. The Commonwealth may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera. The Commonwealth may, for good cause shown, move the court for a partial lifting of the seal to facilitate the investigative process or settlement.

D. Upon a showing by the Commonwealth that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Commonwealth's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as (i) limiting the number of witnesses the person may call; (ii) limiting the length of the testimony of such witnesses; (iii) limiting the person's cross-examination of witnesses; and (iv) otherwise limiting the participation by the person in the litigation.

E. Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

F. If the Commonwealth elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the Commonwealth so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts at the Commonwealth's expense. When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Commonwealth to intervene at a later date upon a showing of good cause.

G. Whether or not the Commonwealth proceeds with the action, upon a showing by the Commonwealth that certain actions of discovery by the person initiating the action would interfere with the Commonwealth's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than sixty days. Such a showing shall be conducted in camera. The court may extend the sixty-day period upon a further showing in camera that the Commonwealth has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

H. Notwithstanding the provisions of subsection B of § 8.01-216.5, the Commonwealth may elect to pursue its claim through any alternate remedy available to the Commonwealth, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this article. For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal to a court of competent jurisdiction of the Commonwealth, if the time for filing an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

§ 8.01-216.7. Award to private plaintiff

A. Except as hereinafter provided, if the Commonwealth proceeds with an action brought by a person under § 8.01-216.5, such person shall receive at least fifteen percent but not more than twenty-five percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one that the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or Auditor of Public Accounts' report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than ten percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under this section shall be made from the proceeds of the award. Any such person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

B. If the Commonwealth does not proceed with an action, the person bringing the action or settling the claim shall receive an amount that the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than twenty-five percent and not more than thirty percent of the proceeds of the award or settlement and shall be paid out of the proceeds. Such person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

C. Whether or not the Commonwealth proceeds with the action, if the court finds that the action was brought

by a person who planned and initiated the violation of § 8.01-216.3 upon which the action was brought, or if the person bringing the action is convicted of criminal conduct arising from his role in the violation of § 8.01-216.3, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the Commonwealth to continue the action.

D. If the Commonwealth does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

§ 8.01-216.8. Certain actions barred; relief from employment discrimination

No court shall have jurisdiction over an action brought under § 8.01-216.5 based on information discovered by a present or former employee of the Commonwealth during the course of his employment unless that employee first, in good faith, exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and unless the Commonwealth failed to act on the information provided within a reasonable period of time.

No court shall have jurisdiction over any action brought under this article by an inmate incarcerated within a state or local correctional facility as defined in § 53.1-1.

No court shall have jurisdiction over an action brought under this article against any department, authority, board, bureau, commission, or agency of the Commonwealth, any political subdivision of the Commonwealth, a member of the General Assembly, a member of the judiciary, or an exempt official if the action is based on evidence or information known to the Commonwealth when the action was brought. For purposes of this section, “exempt official” means the Governor, Lieutenant Governor, Attorney General and the directors or members of any department, authority, board, bureau, commission or agency of the Commonwealth or any political subdivision of the Commonwealth.

In no event may a person bring an action under this article that is based upon allegations or transactions that are the subject of a civil suit or an administrative proceeding in which the Commonwealth is already a party.

No court shall have jurisdiction over an action under this article based upon the public disclosure of allegations or transactions in a criminal, civil or administrative hearing, in a legislative, administrative, or Auditor of Public Accounts' report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information. For purposes of this section, “original source” means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Commonwealth before filing an action under this article that is based on the information.

The Commonwealth shall not be liable for expenses a person incurs in bringing an action under this article.

Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his employer because he has opposed any practice referenced in § 8.01-216.3 or because he has initiated, testified, assisted, or participated in any manner in any investigation, action or hearing under this article, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in a court of competent jurisdiction for the relief provided in this section.

§ 8.01-216.9. Procedure; statute of limitations

A subpoena requiring the attendance of a witness at a trial or hearing conducted under this article may be served at any place in the Commonwealth.

A civil action under § 8.01-216.4 or 8.01-216.5 may not be brought (i) more than six years after the date on which the violation is committed or (ii) more than three years after the date when facts material to the right of action are known or reasonably should have been known by the official of the Commonwealth charged with responsibility to act in the circumstances, but in that event no more than ten years after the date on which the violation is committed, whichever occurs last.

In any action brought under § 8.01-216.4 or 8.01-216.5, the Commonwealth shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

Notwithstanding any other provision of law, a final judgment rendered in favor of the Commonwealth in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action that involves the same transaction as in the criminal proceeding and which is brought under § 8.01-216.4 or 8.01-216.5.

§ 8.01-216.10. Civil investigative demands; issuance

A. Whenever the Attorney General has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims law investigation, the Attorney General may, before commencing a civil proceeding under this article, issue in writing and cause to be served upon such person, a civil investigative demand requiring such person (i) to produce such documentary material for inspection and copying, (ii) to answer in writing written interrogatories with respect to such documentary material or information, (iii) to give oral testimony concerning such documentary material or information, or (iv) to furnish any combination of such material, answers, or testimony.

B. Whenever a civil investigative demand is an express demand for any product of discovery, the Attorney

General shall cause to be served, in any manner authorized by this article, a copy of such demand upon the person from whom the discovery was obtained and shall notify the person to whom such demand is issued of the date on which such copy was served.

§ 8.01-216.11. Civil investigative demands; contents and deadlines

Each civil investigative demand issued under this article shall state the nature of the conduct constituting the alleged violation of a false claims law that is under investigation, and the applicable provision of law alleged to be violated.

If such demand is for the production of documentary material, the demand shall (i) describe each class of documentary material to be produced with such definiteness and certainty as to permit such material to be fairly identified; (ii) prescribe a return date for each such class that will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying; and (iii) identify the false claims law investigator to whom such material shall be made available.

If such demand is for answers to written interrogatories, the demand shall (i) set forth with specificity the written interrogatories to be answered; (ii) prescribe dates at which time answers to written interrogatories shall be submitted; and (iii) identify the false claims law investigator to whom such answers shall be submitted.

If such demand is for the giving of oral testimony, the demand shall (i) prescribe a date, time, and place at which oral testimony shall be commenced; (ii) identify a false claims law investigator who shall conduct the examination and the custodian to whom the transcript of such examination shall be submitted; (iii) specify that such attendance and testimony are necessary to the conduct of the investigation; (iv) notify the person receiving the demand of the right to be accompanied by an attorney and any other representative; and (v) describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry that will be taken pursuant to the demand.

Any civil investigative demand that is an express demand for any product of discovery shall not be returned or returnable until twenty-one days after a copy of such demand has been served upon the person from whom the discovery was obtained.

The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand issued under this article shall be a date that is not less than seven days after the date on which the demand is received, unless the Attorney General determines that exceptional circumstances are present that warrant the commencement of such testimony within a lesser period of time.

The Attorney General shall not authorize the issuance of more than one civil investigative demand for oral testimony by the same person unless the person requests otherwise or unless the Attorney General, after investigation, notifies that person in writing that an additional demand for oral testimony is necessary.

§ 8.01-216.12. Civil investigative demands; protected material or information

A civil investigative demand issued under this article shall not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under (i) the standards applicable to subpoenas or subpoenas duces tecum issued by a court of this Commonwealth to aid in a grand jury investigation or (ii) the standards applicable to discovery requests under the Rules of the Supreme Court of Virginia, to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this article.

Any such demand that is an express demand for any product of discovery supersedes any inconsistent order, rule, or provision of law, other than this section, preventing or restraining disclosure of such product of discovery to any person. Disclosure of any product of discovery pursuant to any such express demand does not constitute a waiver of any right or privilege that the person making such disclosure may be entitled to invoke to resist discovery of trial preparation materials.

§ 8.01-216.13. Civil investigative demands; service and jurisdiction

Any civil investigative demand issued under this article may be served by an investigator, or by any person authorized to serve process on individuals in the Commonwealth.

Any such demand or any petition filed under this article may be served upon any person who is not found within Virginia in such manner as the Rules of the Supreme Court of Virginia or the Code of Virginia prescribe for service of process outside Virginia. To the extent that the courts of this Commonwealth can assert jurisdiction over any such person consistent with due process, the courts of this Commonwealth shall have the same jurisdiction to take any action respecting compliance with the provisions of this article by any such person that the court would have if such person were personally within the jurisdiction of the court.

Service of any civil investigative demand issued under this article or of any petition filed under this article may be made upon a partnership, corporation, association, or other legal entity by (i) delivering an executed copy of such demand or petition to any partner, executive officer, managing agent, or general agent of the partnership, corporation, association, or entity, or to any agent authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity; (ii) delivering an executed copy of such demand or petition to the principal office or place of business of the partnership, corporation, association, or entity; or (iii) depositing an executed copy of such demand or petition in the United States mail by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office or place of business.

Service of any such demand or petition may be made upon any natural person by (i) delivering an executed copy of such demand or petition to the person, or (ii) depositing an executed copy of such demand or petition in the United States mail by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.

A verified return by the individual serving any civil investigative demand issued under this article or any petition filed under this article setting forth the manner of such service shall be proof of service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

§ 8.01-216.14. Civil investigative demands; documentary material

The production of documentary material in response to a civil investigative demand served under this article shall be made under a sworn certificate, in such form as the demand designates, by (i) in the case of a natural person, the person to whom the demand is directed, or (ii) in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person. The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the investigator identified in the demand.

Any person upon whom any civil investigative demand for the production of documentary material has been served shall make such material available for inspection and copying to the investigator identified in such demand at the principal place of business of such person, or at such other place as the investigator and the person thereafter may agree and prescribe in writing, or as the court may direct. Such material shall be made available on the return date specified in such demand, or on such later date as the investigator may prescribe in writing. Such person may, upon written agreement between the person and the investigator, substitute copies for originals of all or any part of such material.

§ 8.01-216.15. Civil investigative demands; interrogatories

Each inquiry in a civil investigative demand served under this article shall be answered separately and fully in writing under oath and shall be submitted under a sworn certificate, in such form as the demand designates, by (i) in the case of a natural person, the person to whom the demand is directed, or (ii) in the case of a person other than a natural person, the person or persons responsible for answering each inquiry. If any inquiry is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

§ 8.01-216.16. Civil investigative demands; oral examinations

A. The examination of any person pursuant to a civil investigative demand for oral testimony served under this article shall be taken before an officer authorized to administer oaths under the laws of this Commonwealth or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath and shall, personally or by someone acting under the direction of the officer and

in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the Attorney General. This section shall not preclude the taking of testimony by any means authorized by and in a manner consistent with the Rules of the Supreme Court of Virginia.

B. The investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney for and any other representative of the person giving the testimony, the attorney for the Commonwealth, any person who may be agreed upon by the attorney for the Commonwealth and the person giving the testimony, the officer before whom the testimony is to be taken, and any court reporter taking such testimony.

C. The oral testimony of any person taken pursuant to a civil investigative demand served under this article shall be taken in the county or city within which such person resides, is found, or transacts business or in such other place as may be agreed upon by the investigator conducting the examination and such person.

D. When the testimony is fully transcribed, the investigator or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to examine and read the transcript, unless such examination and reading are waived by the witness. Any changes in form or substance that the witness desires to make shall be entered and identified upon the transcript by the officer or the investigator, with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within thirty days after being afforded a reasonable opportunity to examine it, the officer or the investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reasons, if any, given therefor.

E. The officer before whom the testimony is taken shall certify on the transcript that the witness was sworn by the officer and that the transcript is a true record of the testimony given by the witness, and the officer or investigator shall promptly deliver the transcript, or send the transcript by registered or certified mail, to the Attorney General.

F. Upon payment of reasonable charges therefor, the investigator shall furnish a copy of the transcript to the witness only, except that the Attorney General may, for good cause, limit such witness to inspection of the official transcript of the witness' testimony.

G. Any person compelled to appear for oral testimony under a civil investigative demand may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege. Such person may not otherwise object to or refuse to answer any question, and may not directly or through counsel otherwise interrupt the oral examina-

tion. If such person refuses to answer any question, a petition may be filed in the circuit court for an order compelling such person to answer such question. If such person refuses to answer any question on the grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with applicable law.

H. Any person appearing for oral testimony under a civil investigative demand issued under this article shall be entitled to the same fees and allowances paid to witnesses in the circuit court.

§ 8.01-216.17. Civil investigative demands; custodian of documents; answers

A. The Attorney General shall serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this article.

B. An investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony under this section shall transmit them to the Attorney General. The Attorney General shall take physical possession of such material, answers, or transcripts and shall be responsible for the use made of them and for the return of documentary material.

C. The Attorney General may cause the preparation of such copies of documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any investigator, or other officer or employee of the Attorney General or employee of the Department of State Police, who is authorized for such use by the Attorney General. Such material, answers, and transcripts may be used by any authorized investigator or other officer or employee in connection with the taking of oral testimony under this article.

D. Except as otherwise provided in this section, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the Attorney General, shall be available for examination by any individual other than an investigator or other officer or employee of the Attorney General or employee of the Department of State Police authorized by the Attorney General. The prohibition on the availability of material, answers, or transcripts shall not apply if consent is given by the person who produced such material, answers, or transcripts, or, in the case of any product of discovery produced pursuant to an express demand for such material, consent is given by the person from whom the discovery was obtained. Nothing in this subsection is intended to prevent disclosure to the General Assembly, including any committee or subcommittee of the General Assembly, or to any other state agency for use by such agency in furtherance of its statutory responsibilities. Disclosure of information to any such other agency shall be allowed only upon application, made by the Attorney General to a circuit court, showing substantial need for the use of the information by such agency in furtherance of its statutory responsibilities.

E. While in the possession of the Attorney General and under such reasonable terms and conditions as the Attorney General shall prescribe, (i) documentary material and answers to interrogatories shall be available for examination by the person who produced such material or answers, or by a representative of that person authorized by that person to examine such material and answers, and (ii) transcripts of oral testimony shall be

available for examination by the person who produced such testimony or by a representative of that person authorized by that person to examine such transcripts.

F. Any attorney employed by the Office of the Attorney General designated to appear before any court, grand jury, or state agency in any case or proceeding may use any documentary material, answers to interrogatories, or transcripts of oral testimony in connection with any such case or proceeding as such attorney determines to be required. Upon the completion of any such case or proceeding, such attorney shall return to the custodian any such material, answers, or transcripts so delivered that have not passed into the control of the court, grand jury, or agency through introduction into the record of such case or proceeding.

G. If any documentary material has been produced by any person in the course of any investigation pursuant to a civil investigative demand under this article, and (i) any case or proceeding before the court or grand jury arising out of such investigation, or any proceeding before any state agency involving such material, has been completed, or (ii) no case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of such investigation, the Attorney General shall, upon written request of the person who produced such material, return to such person any material, other than copies furnished to the investigator, or made for the Attorney General that has not passed into the control of any court, grand jury, or agency through introduction into the record of such case or proceeding.

§ 8.01-216.18. Civil investigative demands; judicial proceedings for noncompliance

A. Whenever any person fails to comply with any civil investigative demand issued under this article, or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender the material, the Attorney General may file in the appropriate circuit court for the county or city in which such person resides, is found, or transacts business, and serve upon such person a petition for a court order for the enforcement of the civil investigative demand.

B. Any person who has received a civil investigative demand issued under this article may file, in the circuit court of any county or city within which such person resides, is found, or transacts business, and serve upon the investigator identified in such demand a petition for an order of the court to modify or set aside the demand. In the case of a petition addressed to an express demand for any product of discovery, a petition to modify or set aside such demand may be brought only in the circuit court of the county or city in which the proceeding in which such discovery was obtained is or was last pending. Any petition under this section shall be filed (i) within twenty-one days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or (ii) within such longer period as may be prescribed in writing by any investigator identified in the demand.

C. The petition shall specify each ground upon which the petitioner relies in seeking relief, and may be based upon any failure of the demand to comply with the provisions of this article or upon any constitutional or other legal right or privilege of such person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part, ex-

cept that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.

D. In the case of any civil investigative demand issued under this article that is an express demand for any product of discovery, the person from whom such discovery was obtained may file, in the circuit court of the county or city in which the proceeding in which such discovery was obtained is or was last pending, and serve upon any investigator identified in the demand and upon the recipient of the demand a petition for a court order to modify or set aside those portions of the demand requiring production of any such product of discovery. Any petition under this subsection shall be filed (i) within twenty-one days after the date of service of the civil investigative demand or at any time before the return date specified in the demand, whichever date is earlier, or (ii) within such longer period as may be prescribed in writing by any investigator identified in the demand.

E. The petition shall specify each ground upon which the petitioner relies in seeking relief and may be based upon any failure of the demand from which relief is sought to comply with the provisions of this article, or upon any constitutional or other legal right or privilege of the petitioner. During the pendency of the petition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.

F. At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories produced, or transcripts of oral testimony given by any person in compliance with any civil investigative demand issued under this article, such person, and in the case of an express demand for any product of discovery, the person from whom such discovery was obtained, may file, in the circuit court of the county or city within which the office of such custodian is situated, and serve upon such custodian a petition for a court order to require the performance by the custodian of any duty imposed upon the custodian by this section. Whenever any petition is filed in any circuit court under this section, the court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry out the provisions of this section. Any final order so entered shall be subject to appeal in the same manner as appeals of other final orders in civil matters. Any disobedience of any final order entered under this section by any court shall be punished as contempt of the court.

G. Any documentary material, answers to written interrogatories, or oral testimony provided under any civil investigative demand issued under this article shall be exempt from disclosure under the Virginia Administrative Process Act (§ 2.2-4000 et seq.).

§ 8.01-216.19. Application of the Rules of the Supreme Court

The Rules of the Supreme Court of Virginia shall apply to all proceedings under this article, except when those Rules are inconsistent with this article.

END OF DOCUMENT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

NOV - 4 2008

Thomas Storm, Director
Medicaid Fraud Control Unit
State of Wisconsin Department of Justice
17 W. Main Street
P.O. Box 7857
Madison, Wisconsin 53707-7857

Dear Mr. Storm:

The Office of Inspector General (OIG) of the U.S. Department of Health and Human Services (HHS) has received your request to review the Wisconsin False Claims Act, Wis. Stat. § 20.931, under the requirements of section 6031(b) of the Deficit Reduction Act (DRA). Section 6031 of the DRA provides a financial incentive for States to enact laws that establish liability to the State for individuals and entities that submit false or fraudulent claims to the State Medicaid program. For a State to qualify for this incentive, the State law must meet certain requirements enumerated under section 6031(b) of the DRA, as determined by the Inspector General of HHS in consultation with the Department of Justice (DOJ). Based on our review of the law and consultation with DOJ, we have determined that the Wisconsin False Claims Act meets the requirements of section 6031(b) of the DRA when it is considered together with section 893.981 of the Wisconsin Statutes, which establishes a 10-year statute of limitations for actions brought under the Wisconsin False Claims Act.

Please note that a State that has a law in effect that OIG has determined meets the requirements of section 6031(b) of the DRA will be deemed to be in compliance with such requirements for so long as the law continues to meet such requirements. We would appreciate it if you would notify OIG of any amendment to the Wisconsin False Claims Act or section 893.981 of the Wisconsin Statutes within 30 days after such amendment.

If you have any questions regarding this review, please contact me, or have your staff contact Susan Elter Gillin at 202-205-9426 or susan.gillin@oig.hhs.gov, or Katie Arnholt at (202) 205-3203 or katie.arnholt@oig.hhs.gov.

Sincerely,

Daniel R. Levinson

Daniel R. Levinson
Inspector General

C

West's Wisconsin Statutes Annotated Currentness
Organization of State Government (Ch. 13 to 22)
Chapter 20. Appropriations and Budget Management (Refs & Annos)
Subchapter X. General Administrative Provisions
20.931. False claims for medical assistance; actions by or on behalf of state

(1) In this section:

(b) “Claim” includes any request or demand for medical assistance made to any officer, employee, or agent of this state.

(c) “Employer” includes all agencies and authorities.

(d) “Knowingly” means, with respect to information, having actual knowledge of the information, acting in deliberate ignorance of the truth or falsity of the information, or acting in reckless disregard of the truth or falsity of the information. “Knowingly” does not mean specifically intending to defraud.

(dm) “Medical assistance” has the meaning given under s. 49.43(8).

(e) “Proceeds” includes damages, civil penalties, surcharges, payments for costs of compliance, and any other economic benefit realized by this state as a result of an action or settlement of a claim.

(f) “State public official” has the meaning given in s. 19.42(14).

(2) Except as provided in sub. (3), any person who does any of the following is liable to this state for 3 times the amount of the damages sustained by this state because of the actions of the person, and shall forfeit not less than $5,000 nor more than $10,000 for each violation:

(a) Knowingly presents or causes to be presented to any officer, employee, or agent of this state a false claim for medical assistance.

(b) Knowingly makes, uses, or causes to be made or used a false record or statement to obtain approval or payment of a false claim for medical assistance.

(c) Conspires to defraud this state by obtaining allowance or payment of a false claim for medical assistance, or by knowingly making or using, or causing to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Medical Assistance program.

(g) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease any obligation to pay or transmit money or property to the Medical Assistance program.

(h) Is a beneficiary of the submission of a false claim for medical assistance to any officer, employee, or agent of this state, knows that the claim is false, and fails to disclose the false claim to this state within a reasonable time after the person becomes aware that the claim is false.

(3) The court may assess against a person who violates sub. (2) not less than 2 nor more than 3 times the amount of the damages sustained by the state because of the acts of the person, and shall not assess any forfeiture, if the court finds all of the following:

(a) The person who commits the acts furnished the attorney general with all information known to the person about the acts within 30 days after the date on which the person obtained the information.

(b) The person fully cooperated with any investigation of the acts by this state.

(c) At the time that the person furnished the attorney general with information concerning the acts, no criminal prosecution or civil or administrative enforcement action had been commenced with respect to any such act, and the person did not have actual knowledge of the existence of any investigation into any such act.

(5)(a) Except as provided in subs. (10) and (12), any person may bring a civil action as a qui tam plaintiff against a person who commits an act in violation of sub. (2) for the person and the state in the name of the state.

(b) The plaintiff shall serve upon the attorney general a copy of the complaint and documents disclosing substantially all material evidence and information that the person possesses. The plaintiff shall file a copy of the complaint with the court for inspection in camera. Except as provided in par. (c), the complaint shall remain under seal for a period of 60 days from the date of filing, and shall not be served upon the defendant until the court so orders. Within 60 days from the date of service upon the attorney general of the complaint, evidence, and information under this paragraph, the attorney general may intervene in the action.

(c) The attorney general may, for good cause shown, move the court for one or more extensions of the period during which a complaint in an action under this subsection remains under seal.

(d) Before the expiration of the period during which the complaint remains under seal, the attorney general shall do one of the following:

1. Proceed with the action or an alternate remedy under sub. (10), in which case the action or proceeding under sub. (10) shall be prosecuted by the state.

2. Notify the court that he or she declines to proceed with the action, in which case the person bringing the action may proceed with the action.

(e) If a person brings a valid action under this subsection, no person other than the state may intervene or bring a related action while the original action is pending based upon the same facts underlying the pending action.

(f) In any action or other proceeding under sub. (10) brought under this subsection, the plaintiff is required to prove all essential elements of the cause of action or complaint, including damages, by a preponderance of the evidence.

(6) If the state proceeds with an action under sub. (5) or an alternate remedy under sub. (10), the state has primary responsibility for prosecuting the action or proceeding under sub. (10). The state is not bound by any act of the person bringing the action, but that person has the right to continue as a party to the action, subject to the limitations under sub. (7).

(7)(a) The state may move to dismiss an action under sub. (5) or an administrative proceeding under sub. (10) to which the state is a party for good cause shown, notwithstanding objection of the person bringing the action, if that person is served with a copy of the state's motion and is provided with an opportunity to oppose the motion before the court or the administrative agency before which the proceeding is conducted.

(b) With the approval of the governor, the attorney general may compromise and settle an action under sub. (5) or an administrative proceeding under sub. (10) to which the state is a party, notwithstanding objection of the person bringing the action, if the court determines, after affording to the person bringing the action the right to a hearing at which the person is afforded the opportunity to present evidence in opposition to the proposed settlement, that the proposed settlement is fair, adequate, and reasonable considering the relevant circumstances pertaining to the violation.

(c) Upon a showing by the state that unrestricted participation in the prosecution of an action under sub. (5) or an alternate proceeding to which the state is a party by the person bringing the action would interfere with or unduly delay the prosecution of the action or proceeding, or would result in consideration of repetitious or irrelevant evidence or evidence presented for purposes of harassment, the court may limit the person's participation in the prosecution, such as:

1. Limiting the number of witnesses that the person may call.

2. Limiting the length of the testimony of the witnesses.

3. Limiting the cross-examination of witnesses by the person.

4. Otherwise limiting the participation by the person in the prosecution of the action or proceeding.

(d) Upon showing by a defendant that unrestricted participation in the prosecution of an action under sub. (5) or alternate proceeding under sub. (10) to which the state is a party by the person bringing the action would result in harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the person's participation in the prosecution.

(8) Except as provided in sub. (7), if the state elects not to participate in an action filed under sub. (5), the person bringing the action may prosecute the action. If the attorney general so requests, the attorney general shall, at the state's expense, be served with copies of all pleadings and deposition transcripts in the action. If the person bringing the action initiates prosecution of the action, the court, without limiting the status and rights of that person, may permit the state to intervene at a later date upon showing by the state of good cause for the proposed intervention.

(9) Whether or not the state participates in an action under sub. (5), upon showing in camera by the attorney general that discovery by the person bringing the action would interfere with the state's ongoing investigation or prosecution of a criminal or civil matter arising out of the same facts as the facts upon which the action is based, the court may stay such discovery in whole or in part for a period of not more than 60 days. The court may extend the period of any such stay upon further showing in camera by the attorney general that the state has pursued the criminal or civil investigation of the matter with reasonable diligence and the proposed discovery in the action brought under sub. (5) will interfere with the ongoing criminal or civil investigation or prosecution.

(10) The attorney general may pursue a claim relating to an alleged violation of sub. (2) through an alternate remedy available to the state or any state agency, including an administrative proceeding to assess a civil forfeiture. If the attorney general elects any such alternate remedy, the attorney general shall serve timely notice of his or her election upon the person bringing the action under sub. (5), and that person has the same rights in the alternate venue as the person would have had if the action had continued under sub. (5). Any finding of fact or conclusion of law made by a court or by a state agency in the alternate venue that has become final is conclusive upon all parties named in an action under sub. (5). For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal, if all time for filing an appeal or petition for review with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(11)(a) Except as provided in pars. (b) and (e), if the state proceeds with an action brought by a person under sub. (5) or the state pursues an alternate remedy relating to the same acts under sub. (10), the person who brings the action shall receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person contributed to the prosecution of the action or claim.

(b) Except as provided in par. (e), if an action or claim is one in which the court or other adjudicator finds to be

based primarily upon disclosures of specific information not provided by the person who brings an action under sub. (5) relating to allegations or transactions specifically in a criminal, civil, or administrative hearing, or in a legislative or administrative report, hearing, audit, or investigation, or report made by the news media, the court or other adjudicator may award such amount as it considers appropriate, but not more than 10 percent of the proceeds of the action or settlement of the claim, depending upon the significance of the information and the role of the person bringing the action in advancing the prosecution of the action or claim.

(c) Except as provided in par. (e), in addition to any amount received under par. (a) or (b), a person bringing an action under sub. (5) shall be awarded his or her reasonable expenses necessarily incurred in bringing the action together with the person's costs and reasonable actual attorney fees. The court or other adjudicator shall assess any award under this paragraph against the defendant.

(d) Except as provided in par. (e), if the state does not proceed with an action or an alternate proceeding under sub. (10), the person bringing the action shall receive an amount that the court decides is reasonable for collection of the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action and shall be paid from the proceeds. In addition, the person shall be paid his or her expenses, costs, and fees under par. (c).

(e) Whether or not the state proceeds with the action or an alternate proceeding under sub. (10), if the court or other adjudicator finds that an action under sub. (5) was brought by a person who planned or initiated the violation upon which the action or proceeding is based, then the court may, to the extent that the court considers appropriate, reduce the share of the proceeds of the action that the person would otherwise receive under par. (a), (b), or (d), taking into account the role of that person in advancing the prosecution of the action or claim and any other relevant circumstance pertaining to the violation, except that if the person bringing the action is convicted of criminal conduct arising from his or her role in a violation of sub. (2), the court or other adjudicator shall dismiss the person as a party and the person shall not receive any share of the proceeds of the action or claim or any expenses, costs, and fees under par. (c).

(12)(a) No court has jurisdiction over an action brought by a private person under sub. (5) against a state public official if the action is based upon information known to the attorney general at the time that the action is brought.

(b) No person may bring an action under sub. (5) that is based upon allegations or transactions that are the subject of a civil action or an administrative proceeding to assess a civil forfeiture in which the state is a party if that action or proceeding was commenced prior to the date that the action is filed.

(13) The state is not liable for any expenses incurred by a private person in bringing an action under sub. (5).

(14) Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against by his or her employer because of lawful actions taken by the employee, on behalf of the employee, or by others in furtherance of an action or claim filed under this section, including investigation for, ini-

tiation of, testimony for, or assistance in an action or claim filed or to be filed under sub. (5) is entitled to all necessary relief to make the employee whole. Such relief shall in each case include reinstatement with the same seniority status that the employee would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay at the legal rate, and compensation for any special damages sustained as a result of the discrimination, including costs and reasonable actual attorney fees. An employee may bring an action to obtain the relief to which the employee is entitled under this subsection.

(15) A civil action may be brought based upon acts occurring prior to October 27, 2007, if the action is brought within the period specified in s. 893.981.

(16) A judgment of guilty entered against a defendant in a criminal action in which the defendant is charged with fraud or making false statements estops the defendant from denying the essential elements of the offense in any action under sub. (5) that involves the same elements as in the criminal action.

(17) The remedies provided for under this section are in addition to any other remedies provided for under any other law or available under the common law.

(18) This section shall be liberally construed and applied to promote the public interest and to effect the congressional intent in enacting 31 USC 3279 to 3733, as reflected in the act and the legislative history of the act.

<<For credits, see Historical Note field.>>

HISTORICAL AND STATUTORY NOTES

2009 Electronic Pocket Part Update

Source:

2007 Act 20, § 635, eff. Oct. 27, 2007.

W. S. A. 20.931, WI ST 20.931

Current through 2009 Act 27, Acts 29 through 41, and Acts 43 through 49, published 10/20/2009

END OF DOCUMENT

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Reimbursement Rates for Calendar Year 2006

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: Notice is given that the Director of Indian Health Service (IHS), under the authority of sections 321(a) and 322(b) of the Public Health Service Act (42 U.S.C. 248 and 249(b)), Public Law 83–568 (42 U.S.C. 2001 (a)), and the Indian Health Care Improvement Act (25 U.S.C. 1601 *et seq.*), has approved the following rates for inpatient and outpatient medical care provided by IHS facilities for Calendar Year 2006 for Medicare and Medicaid beneficiaries and beneficiaries of other Federal programs. The Medicare Part A inpatient rates are excluded from the table below as they are paid based on the prospective payment system. Since the inpatient rates set forth below do not include all physician services and practitioner services, additional payment may be available to the extent that those services meet applicable requirements. Public Law 106–554, section 432, dated December 21, 2000, authorized IHS facilities to file Medicare Part B claims with the carrier for payment for physician and certain other practitioner services provided on or after July 1, 2001.

	Calendar year 2006
Inpatient Hospital Per Diem Rate (Excludes Physician/Practitioner Services):	
Lower 48 States	$1,660
Alaska	2,131
Outpatient Per Visit Rate (Excluding Medicare):	
Lower 48 States	242
Alaska	406
Outpatient Per Visit Rate (Medicare):	
Lower 48 States	193
Alaska	348
Medicare Part B Inpatient Ancillary Per Diem Rate:	
Lower 48 States	340
Alaska	625

Outpatient Surgery Rate (Medicare)

Established Medicare rates for freestanding Ambulatory Surgery Centers.

Effective Date for Calendar Year 2006 Rates

Consistent with previous annual rate revisions, the Calendar Year 2006 rates will be effective for services provided on/or after January 1, 2006 to the extent consistent with payment authorities including the applicable Medicaid State plan.

Dated: June 27, 2006.

Charles W. Grim,

Assistant Surgeon General, Director, Indian Health Service.

[FR Doc. E6–13785 Filed 8–18–06; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Publication of OIG's Guidelines for Evaluating State False Claims Acts

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: Under section 1909 of the Social Security Act (the Act), 42 U.S.C. 1396h, the Inspector General of the Department of Health and Human Services is required to determine, in consultation with the Attorney General, whether a State has in effect a law relating to false or fraudulent claims submitted to a State Medicaid program that meets certain enumerated requirements. If the Inspector General determines that a State law meets these requirements, the State medical assistance percentage, with respect to any amounts recovered under a State action brought under such a law, shall be increased by 10 percentage points. This notice sets forth the Inspector General's guidelines for evaluating whether a State law meets the requirements of section 1909 of the Act.

DATES: *Effective Date:* These guidelines are effective on August 21, 2006.

FOR FURTHER INFORMATION CONTACT: Roderick T. Chen, Office of Counsel to the Inspector General, (202) 401–4134, or Joel Schaer, Office of External Affairs, (202) 619–0089.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1909 of the Act, added by section 6031 of the Deficit Reduction Act of 2005 (Pub. L. 109–171), creates a financial incentive for States to enact legislation that establishes liability to the State for individuals or entities that submit false or fraudulent claims to the State Medicaid program. This incentive takes the form of an increase in the State's share of any amounts recovered from a State action brought under a qualifying law.[1] In order for a State to qualify for this incentive, the State law must meet certain enumerated requirements, as determined by the Inspector General of the Department of Health and Human Services in consultation with the Attorney General.

Medicaid, authorized under Title XIX of the Act, 42 U.S.C. 1396–1396v, is a joint Federal and State program that pays for medical and other related benefits provided to needy beneficiaries. States that participate in Medicaid administer their own programs within broad Federal guidelines and receive matching funds from the Federal government. The Federal share generally varies between 50 percent and 83 percent, depending on the State per capita income.

False or fraudulent claims presented to State Medicaid programs by participating providers and others may give rise to civil liability under the Federal False Claims Act (FCA), 31 U.S.C. 3729–3733. Under the FCA, any person who knowingly submits a false or fraudulent claim to a State Medicaid program is liable to the Federal Government for three times the amount of the Federal Government's damages plus penalties of $5,000 to $10,000 for each false or fraudulent claim. Any recovery of damages to the State Medicaid program will be shared with the State in the same proportion as the State's share of the costs of the Medicaid program. For example, if a State's Medicaid share is 40 percent, then the State would be entitled to receive 40 percent of the damages and the Federal Government would retain 60 percent of the damages.

Under the *qui tam* provisions of the FCA, private persons (known as relators) may file lawsuits in Federal court against individuals and/or entities that defraud the Federal government by filing false or fraudulent Medicaid claims. The Department of Justice (DOJ) has an opportunity to investigate the relator's allegations, and DOJ may intervene and take over the prosecution of the action. If DOJ chooses not to intervene, the relator has the right to conduct the action. In general, with respect to recoveries of Federal damages and penalties in cases in which DOJ has intervened, the relator is entitled to between 15 and 25 percent of the recovery of Federal damages and penalties depending upon the extent to which the relator substantially contributed to the case. In general, the relator is entitled to between 25 and 30

[1] The increase results from a 10-percentage point decrease in the Federal share of any recovery from a State action brought under a qualifying law.

percent of any recoveries of Federal damages and penalties if DOJ has not intervened in the case. Because the FCA applies only to false claims against the Federal Government, the relator is not entitled to a share of the State portion of a Medicaid recovery under the FCA.

Many States have enacted their own false claims acts that establish civil liability to the State for individuals and entities that submit false or fraudulent claims to the State Medicaid program. Generally, these laws include *qui tam* provisions that reward relators with a share of the State portion of recoveries in cases of Medicaid fraud. Currently, if a State obtains a recovery as the result of a State action relating to false or fraudulent claims submitted to its Medicaid program, it must share the damages recovered with the Federal Government in the same proportion as the Federal Government's share in the cost of the State Medicaid program. For example, if a State's Medicaid share is 40 percent, then the State would retain 40 percent of any damages recovered from an individual or entity that has defrauded Medicaid, and the Federal Government would be entitled to the remaining 60 percent of damages.

II. Section 1909 of the Social Security Act

In order to encourage States to pursue Medicaid fraud, Congress added a new section 1909 to the Act, effective January 1, 2007. Under this section, if a State has in effect a State false claims act that meets certain enumerated requirements, the Federal medical assistance percentage will be decreased by 10 percentage points with respect to any amount recovered under a State action brought under such a law. Therefore, the State's share of any recovery in an action under such a law will be increased by 10 percentage points. For example, if a State has a qualifying State false claims act and the State's Medicaid share is 50 percent, the State would be entitled to 60 percent of the amount of the recovery, while the Federal Government would receive the remaining 40 percent.

Section 1909(b) of the Act requires the Inspector General to determine, in consultation with the Attorney General, whether a State has in effect a false claims act that meets the following requirements:

1. The law must establish liability to the State for false or fraudulent claims described in 31 U.S.C. 3729 with respect to any expenditure described in section 1903(a) of the Act;

2. The law must contain provisions that are at least as effective in rewarding and facilitating *qui tam* actions for false or fraudulent claims as those described in 31 U.S.C. 3730–3732;

3. The law must contain a requirement for filing an action under seal for 60 days with review by the State Attorney General; and

4. The law must contain a civil penalty that is not less than the amount of the civil penalty authorized under 31 U.S.C. 3729.

A State that, as of January 1, 2007, has a law in effect that meets the enumerated requirements shall be considered in compliance with such requirements so long as the law continues to meet such requirements.

The effective date of section 1909 of the Act is January 1, 2007. Thus, a State with a law in effect that meets the enumerated requirements will qualify for a 10 percentage point increase in its share of any amounts recovered from a State action brought under the law if the recovery is received on or after January 1, 2007. A State may enact a law before, on, or after January 1, 2007. Furthermore, the action that gives rise to the recovery may be commenced before, on, or after January 1, 2007. As long as the State's law meets the enumerated requirements on or after January 1, 2007, and the recovery from the action brought under the qualifying law is received by the State on or after January 1, 2007, the State will qualify for a 10 percent increase in its share of the amount recovered.

It is important to note that section 1909 of the Act does not require a State to have in effect a false claims act or to enact a false claims act that meets these minimum requirements. States may choose not to enact false claims acts, or may choose to enact false claims acts that do not meet the enumerated requirements. However, a State that does not have such a law in effect will not qualify for the 10 percentage point increase in its share of any recoveries from an action brought under such a law.

III. OIG Guidelines for Evaluating State False Claims Acts

Section 1909(b) of the Act sets forth four requirements that a State law must meet if the State is to qualify for the 10 percentage point increase in any State Medicaid share recovered under the law. The Inspector General is required to determine, in consultation with the Attorney General, whether a State law meets these requirements. After reviewing section 1909 of the Act and consulting with DOJ, OIG has developed guidelines to use in evaluating whether a State law meets the enumerated requirements. It is important to note that these guidelines are not model statutory provisions. OIG is not requiring any specific language to be included in State false claims acts. Rather, the guidelines reflect the provisions relevant to OIG's review of whether a State law meets the requirements of section 1909(b) of the Act.

A. Liability for False or Fraudulent Claims

Under section 1909(b)(1) of the Act, the State law must establish liability to the State for false or fraudulent claims described in 31 U.S.C. 3729, with respect to any expenditure described in section 1903(a) of the Act. Section 1903(a) of the Act describes expenditures related to State Medicaid plans, including all expenditures for medical assistance under a State Medicaid plan. When evaluating a State law to determine whether it meets the requirements of section 1909(b)(1) of the Act, OIG will consider whether the law provides for the following:

1. Liability to the State for false or fraudulent claims with respect to Medicaid program expenditures, including:

- Knowingly presenting, or causing to be presented, a false or fraudulent claim for payment or approval to the Medicaid program;
- Knowingly making, using, or causing to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Medicaid program;
- Conspiring to defraud the Medicaid program by getting a false or fraudulent claim allowed or paid;
- Knowingly making, using, or causing to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Medicaid program.

2. Definitions for the terms ''knowing'' and ''knowingly'' meaning that a person, with respect to information: (a) Has actual knowledge of the information; (b) acts in deliberate ignorance of the truth or falsity of the information; or (c) acts in reckless disregard of the truth or falsity of the information. In addition, no proof of specific intent to defraud should be required.

B. Qui Tam Provisions

Under section 1909(b)(2) of the Act, a State law must contain provisions that are at least as effective in rewarding and facilitating *qui tam* actions for false or fraudulent claims as those described in 31 U.S.C. 3730–3732. When evaluating a State law to determine whether it meets the requirements of section 1909(b)(2) of the Act, OIG will consider

whether the law provides for the following:

1. A provision that authorizes a person (relator) to bring a civil action for a violation of the State false claims act for the person and for the State, which will be brought in the name of the State.

2. A provision that requires a copy of complaint and written disclosure of material evidence and information to be served on the State Attorney General in accordance with State Rules of Civil Procedure.

3. A provision that provides that when a relator brings a qui tam action, no person other than the State may intervene or bring a related action based on the facts underlying the pending action.

4. Provisions that set forth rights of parties to *qui tam* actions, including:

• If the State proceeds with the action, the State has primary responsibility in the action, but the relator shall have the right to continue as a party to the action; and

• If the State elects not to proceed with the action, the relator may conduct the action but the State may intervene at a later date upon a showing of good cause.

5. Provisions that reward a relator with a share of the proceeds of the action or settlement of the claim, including:

• If the State proceeds with an action brought by the *qui tam* relator, the relator receives at least 15 percent of the proceeds of the action or settlement of the claim, and may receive a higher percentage depending on the relator's contribution to the prosecution of the action;

• If the State does not proceed with an action, the relator receives at least 25 percent of the proceeds of the action or settlement, and may receive a higher percentage depending on the relator's contribution to the prosecution of the action; and

• The court is authorized to award the relator an amount for reasonable expenses, including attorneys' fees and costs, to be awarded against the defendant.

6. A statute of limitations period not shorter than 6 years after the date of the violation is committed, or 3 years after the date when facts material to the right of action are known or reasonably should have been known by the State official charged with the responsibility to act in the circumstances, whichever occurs last.

7. A provision that establishes the burden of proof, for each of the elements of the cause of action including damages, no greater than a preponderance of the evidence.

8. A provision that provides a cause of action for relators who suffer retribution from employers for whistleblower activities related to the State false claims act.

OIG is required to consider whether the State law is at least as effective in rewarding and facilitating *qui tam* actions when compared to the provisions at 31 U.S.C. 3730–3732. State false claims acts may include procedural rights, reductions in relator awards, jurisdictional bars, and other qui tam provisions similar to those found in the FCA that do not conflict with the requirements of section 1909(b)(2) of the Act. However, if such provisions are more restrictive than the provisions in the FCA, OIG may determine that a State law is not as effective in rewarding or facilitating *qui tam* actions. OIG will make such determinations on a case-by-case basis and in consultation with DOJ.

C. Seal Provisions

Under section 1909(b)(3) of the Act, a State law must contain a requirement for filing an action under seal for 60 days with review by the State Attorney General. When evaluating whether a State law meets the requirements of section 1909(b)(3) of the Act, OIG will consider whether the law provides a provision that requires the complaint to be filed in camera and to remain under seal for at least 60 days. In addition, OIG will consider whether the State law's seal provisions operate in a way that conflict with the Federal seal in a pendant FCA case.

D. Civil Penalty Provisions

Under section 1909(b)(4) of the Act, the State law must contain a civil penalty that is not less than the amount of the civil penalty authorized under 31 U.S.C. 3729. OIG will review a State law to determine if these provisions include a provision that sets at least treble damages (or double damages in instances of timely self-disclosure and full cooperation) and civil penalties at amounts of at least $5,000 to $10,000 per false claim.[2]

IV. OIG Procedures for Reviewing State False Claims Acts

As noted above, the effective date of section 1909 of the Act is January 1, 2007. A State that, as of January 1, 2007, has a law in effect that meets the enumerated requirements shall be deemed in compliance with such requirements for so long as the law continues to meet such requirements.

With the publication of these guidelines, OIG will accept requests for review of State laws to determine if they meet the requirements of section 1909(b) of the Act. In order to request OIG review of a State law, the State Attorney General's office should submit a complete copy of the State law, or any other relevant information, to the following address: Office of Inspector General, Department of Health and Human Services, Cohen Building, Mail Stop 5527, 330 Independence Avenue, SW., Washington, DC 20201, Attention: Roderick Chen, Office of Counsel to the Inspector General.

Submissions by telecopier, facsimile, or other electronic media will not be accepted. OIG will review the State law under these guidelines and in consultation with DOJ, and inform the State Attorney General's office in writing whether the State law meets the requirements of section 1909(b) of the Act.

Dated: August 16, 2006.

Daniel R. Levinson,

Inspector General.

[FR Doc. E6–13749 Filed 8–18–06; 8:45 am]

BILLING CODE 4150–04–P

[2] DOJ is authorized to adjust the civil penalties under the FCA for inflation and has issued regulations that raise the FCA penalties. *See* Public Law 101–410, 104 Stat. 890 (Oct. 5, 1990); 28 CFR 85.3. However, the statutory provisions of the FCA identify the range of civil penalties as $5,000 to $10,000, and OIG will review State laws based on those statutory provisions.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Recovery Plan for the Chittenango Ovate Amber Snail

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability: final revised recovery plan.

SUMMARY: We, the Fish and Wildlife Service (Service), announce availability of a final revised recovery plan for the endangered Chittenango ovate amber snail (*Novisuccinea chittenangoensis*). The final plan incorporates comments received during the public and peer review period and updates the objectives, criteria, and actions for recovering this endangered species.

ADDRESSES: A copy of the revised plan may be requested by contacting the Fish and Wildlife Service's New York Field Office (NYFO), 3817 Luker Road, Cortland, New York 13045. Copies will also be available for downloading from the NYFO's Web site at *http://www.fws.gov/northeast/nyfo/es/recoveryplans.htm*, and from the